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Use of post-conviction discretion by federal probation officers: a descriptive study

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Use of post-conviction discretion by federal probation officers: A descriptive study

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ABSTRACT

This descriptive study set out to determine if federal probation officers used discretion, and if so, how it was applied to decisions of post-conviction modification and revocation in the supervision of federal offenders. A survey of 82 federal probation officers within the Eighth Circuit of the U.S. Courts was developed, conducted, and analyzed. Findings suggested at least some mild use of discretion by officers, but not radical in the use. Factors influencing discretion included administrative policies, supervisors, and individual characteristics of officers and the offenders they supervise. Offender reentry research was compared with the findings and suggestions made for future research.

CHAPTER 1. INTRODUCTION

Consider these five criminal justice scenarios. First, a two-year-old toddler accidentally shoots and kills her father after playing with an antique hunting rifle that the family kept in the closet. The parents had never previously shown the weapon to the girl. Upon entering the room, the father approached the girl as he observed in horror that she was holding a gun. Just as he reached her, she unintentionally squeezed the trigger firing one round that hit her father in the head killing him instantly.

Second, a husband and wife are engaged in a heated argument. The husband, a chronic alcoholic and cocaine addict, has been arrested and convicted of domestic violence six times, three of which were against his current wife. During their argument, the man obtains a handgun and threatens to kill his wife. After pleading for him to drop the weapon, the man hands her the gun and informs her that she "should just shoot him." The wife does just that, firing a single bullet into his chest. After shooting him, the woman calls 911 and requests an ambulance and police. She sits on the front porch and waits for the authorities to arrive. Unfortunately, her husband bleeds to death before they arrive.

Third, three white supremacist thugs randomly attack a black man. They repeatedly punch and kick the victim while robbing him. After ten minutes, one of the assailants furnishes a firearm presumably to kill the black man. In an act of sheer desperation, the victim wrestles with the armed assailant who drops the weapon. The victim grabs the gun and fires at all three assailants. Two of the attackers escape, however one lay mortally wounded next to the victim.

Fourth, a 47-year old career criminal robs a convenience store and summarily executes the clerk after she complied with his demands for the money. The offender had 61

prior arrest charges and had served eight stints in prison for an assortment of crimes, including murder, armed robbery, rape, burglary, and weapons charges.

Fifth, a 15-year old boy robs a convenience store. During the commission of the robbery, the merchant furnishes a gun and fires at the robber hitting him in the chest. The boy returns fire and kills the merchant. The boy stumbles from the store and collapses due to his wound. He recovers in the hospital.

Objectively, all five scenarios depict the same event, a homicide. However, an assortment of factors renders these cases different; as such it is likely that they will receive different criminal justice outcomes. Some of the differentiating factors are the age of the killer, the criminal history of the killer, the criminal history of the victim, whether or not the killer was a sympathetic figure, whether or not the victim was a sympathetic figure, etc. Moreover, the demeanor of these killers is also very important. Were they crying and remorseful after committing the homicide? Were they cooperative, civil, friendly, or conversant? Were they without remorse, sullen, indignant, abusive?

This exercise alludes to the role of discretion in criminal justice decision-making. Discretion is the decision to choose one course of action over another. Legal factors such as offense seriousness influence discretion, as do extra-legal or informal factors such as the demeanor and sympathetic character of the parties involved. All components of the criminal justice system, the police, court officers, and correctional staff utilize discretion in their daily interactions with criminal defendants.

What is discretion when related to the justice system? Dantzker (1995) described discretion as, "...the action an officer takes in correspondence to personal judgment, conscience, morals, attitude and/or beliefs, as well as the officer's training, experience, and

education" (p 174). As an officer on the street might call it, "a gut decision," implying that the officer could choose between several options, and make what the officer feels is the best decision.

The media often plays a large role in the second-guessing or questioning an officer's discretion. If the officer's decision was a life or death decision, the officer's superiors, the media, and the community at large may question the use of lethal force. Although none of those other people may have been at the scene when the incident occurred, every move the officer did or did not make will be questioned, scrutinized, and reviewed. For this very reason, discretionary acts by officers will often gain a negative perception in the community.

In January 2004, there were a series of police officer related shootings with several ending up in homicides in the Des Moines, IA, area. One specific shooting, and the deceased family's reaction to it, applies to this discussion. On January 30, 2004, Ricky Garcia Jr. was involved in a fatal shootout with various law enforcement agencies in Des Moines, IA, following a twenty-minute police chase. In a *Des Moines Register* article, published on January 31, 2004, the deceased man's 15-year-old sister, Amy Garcia, spoke out. She stated, "He fired at them, sure, but why did they have to fire back?" "Sure, they needed to protect themselves. But it didn't seem as if anybody got hit. . . ."

Even though this is a 15-year-old girl speaking, it represents the lack of understanding by the general public as to the stressful nature of police work. Whereas an accountant may have hours or days to make a financial decision, the officer can have less than one second to make a life or death decision that will be front-page news before the smoke even clears. However, not all officer discretion is life and death decision-making. Sociologists have been looking at the role of discretion in police work for many years.

Atkins and Pogrebin (1978) looked at the broader picture of discretion in criminal justice. They described discretion as referring " ... to a situation in which an official has latitude to make authoritative choices not necessarily specified within the source of authority which governs his decision-making" (p 1). Further, they asserted that discretion is found in all areas of the criminal justice system. They stated,

> Discretion is exercised in the police officer's decision to apprehend a subject, the prosecutor's decision to file, dismiss or reduce formal charges, the judge's decision to admit a defendant to bail, release on recognizance, grant or deny trial motions, suspend sentence, release on probation, impose severe or minimal sentence in prison, and the parole board's decision whether or not to release a prisoner from incarceration. It is a critical element at almost every point in our criminal justice system (p 1).

In Atkins and Pogrebin's work, they found that Rosett viewed that officer's decisions when Rosett stated, "... are discretionary in the sense that the official has the unfettered choice whether to act, and often how to act, in a given case" (p 25). It is this choice of action or non-action that is entrusted in officers and others within the criminal justice system.

Discretion can be viewed as a three-part process of decision-making (Gottfredson and Gottfredson, 1988). First there is a "goal" of the decision maker. This might be seen in a police officer's determination to "clean up the streets" from crime. Next, there are "alternatives" from which the decision maker must choose in order to arrive at an action. Gottfredson and Gottfredson assert this is where discretion is found. Finally, the decision maker has some "information" which can be used to steer the process (p 2-3). Unfortunately, not all the pieces of the puzzle are always present when humans make decisions, and not all decisions are made without some levels of personal bias. This is no different in the criminal justice system.

As a federal probation officer, discretion figures into my job in a number of ways. There is an undeniable tension that rests in the decisions and often times conflicting roles of a probation officer. Am I a law enforcement officer? Am I a social worker? Am I a resource broker? What are my obligations to the protection of the community from the offenders I supervise? Am I really enforcing the conditions of supervision the way the judge intended? Would my supervisor and the probation office administration agree or disagree with my decision? Am I being consistent with other officers and the policies of the office?

These questions are daily considerations to most probation officers, if not consciously, at least subconsciously. Although the questions are the same, often times each officer answers the questions in his or her mind differently. For example, I might consider someone who uses marijuana twice over a one-year period of time as an offender I can still work with in the community and in drug treatment. Another officer may see the same situation as a defiant offender who continues to violate the conditions and may take a more punitive approach.

Another example might be found in the officer's perception of community protection. One officer may believe this is a highly important aspect of the job, while another officer may feel this is secondary to the rehabilitation of the offender. If I place the community first, then I would be less likely to give an offender a second or third chance at compliance when in violation of the conditions. However, if I place the offender first, while I am attempting to assist the offender, the community might continue to be victimized as the offender's violations pile up.

The probation officer's relationship with the court is another key component of officer discretion. In some districts, such as the Southern District of Iowa, the probation

office has a strong working relationship with the court. By this, I mean both parties know their role within the system and respect each other. This is not to say all decisions made by one party are always viewed by the other party to be the "correct" way, but it is to say that the lines of communication are open for discussion and disagreement. However, at all times officers must remember they work at the pleasure of the court. If a judge believes an officer has committed an egregious error, it is possible the officer will be reprimanded or terminated from employment.

When I make a decision relating to one of the offenders I supervise, I take into consideration how the sentencing court would view my actions. In most cases, I feel the court would support my decisions because I have come to understand the views and approaches of the various judges. So does this mean that my decisions are guided, and the court limits my discretion? Perhaps it does to some degree. However, it also means that when I decide an offender has had enough opportunities to comply and continues to fail in the community, the court will generally respect my decision to request revocation of the offender's supervised release. In fact, judges will routinely comment to officers that they respect our decisions and opinions based on the fact that we have the most contact with the offender, and we know the case on a more intimate basis.

Thus, an officer faces complex and often times competing functions within a day's work. Officers are told there is no one right way to handle every situation. Officers are reminded they are well-educated individuals who can make decisions on their own based on the totality of the situation and factors of the case. However, in other locations, officers may be second-guessed and questioned about their decisions based upon the outcomes or even

their break with "tradition." Thus, the balance of individualized case-by-case decision-making and having a good grasp on the "big picture" are often key factors with officers.

Further, the very notion of having a "client" versus an "offender" comes into question in the system as a whole. Traditionally, if an officer views the person who is being supervised as a "client," it would imply a certain level of respect given to the individual. Although it does not necessarily imply equality, it does not carry the same stigma associated with the term "offender." An officer that has clients tends to view people as social work cases in need of rehabilitation. The needs of the community as a whole would be a secondary concern.

If an officer has a caseload of "offenders," the officer is generally most concerned about the prevention of recidivism and control of the individuals. I have noticed some officers that have "offenders" tend to have less tolerance for violations of the individual and a more "black and white" approach to handling the individuals. This is not to say that the officer is unduly harsh or uncaring, but the focus is directed more at crime prevention.

In my experience, I have noticed that most officers will tell you they have a caseload of clients and offenders. There are cases where the officer will spend the majority of his or her time addressing the basic needs of the "client" in an attempt to stabilize the person. However, the next person to walk in his or her office may be viewed as an offender. This person is a danger to themselves and the community. The person may still be actively engaged in crime and violence and may have been doing so since they were ten years old. In this case, the officer is often concerned with containment of the offender to prevent further societal harm.

Taking these two examples of completely different needs and the various approaches and responses by officers, one can see how discretion occurs in the environment of federal probation. Without some level of discretionary decision-making, each and every situation and person would be treated exactly the same. To critics of discretion, this is appealing as it removes the possibility of the evil twin of discretion… discrimination. While discretion is considering one's options and making a choice, discrimination is considering one's options and purposely choosing the harshest choice against a certain type of person (i.e. based on race, gender, ethnicity, etc.).

Discrimination probably exists within the federal probation system, but I have not personally seen it in my interactions with staff and offenders. Based on my experiences, offenders are treated fairly, especially given some of their past histories, current violations, and overall adjustment to supervised release. I have witnessed professionals going about their daily work of addressing needs of the person, the community, and the court. Sometimes this has involved making discretionary decisions.

It seems a certain level of discretion in the criminal justice system is needed. As demonstrated in the opening exercise, not every homicide will be prosecuted. Similarly, not every drug dealer will be treated exactly the same on supervised release. There are plenty of cases in the system of desperate, uneducated welfare mothers driving a load of money to California and returning with a load of drugs on one occasion to support her family. This person violated the law, and is usually the first one to admit she is guilty. However, this is not a comparable amount of culpability as the kingpin drug dealer that is having people, including children, killed to quiet any potential witnesses for trial. Both will be charged under federal drug conspiracy statutes. Both will serve time in prison, and both may come

out of prison to federal supervised release unless the kingpin is sentenced to life in prison or death.

Should they both be treated exactly the same while on supervised release? Consider what happens if each of them violates a condition of supervised release, such as using marijuana on one occasion. Should the officer deal with the welfare mother differently that the drug kingpin? Who poses the greatest risk to his or herself and the community? Again, this small exercise demonstrates the complexities of possible discretion within federal supervised release.

Overview and Theoretical Framework

The issue of discretion in decision-making at the federal post conviction supervised release level by United States Probation Officers has had little or no prior review. In this descriptive study, this author explored the subject matter. Specifically, the ten separate districts that comprise the Eighth Circuit of the U.S. District courts were studied. Within those ten districts, approximately 140 U.S. Probation Officers provided post conviction supervision of federal offenders. A survey was developed to begin the process of looking at the existence and use of officer discretion in decision-making when it comes to supervising offenders. Eighty-two surveys were returned by officers and analyzed. The results of the survey are shared, followed by a discussion of implications of this study. Finally, suggestions are made for further study.

The framework from which this study operated is within the consensus versus conflict theory realm. These classical theories are opposite in their very nature, but provide insight into the world of social motivations and social systems. Consensus theory (also referred to as functionalism, or structural-functionalism), was the primary work of Talcott Parsons (1951,

1954). This theory views society and all its sub-systems and individuals as parts comprising a larger whole. Although consensus theory has continued to evolve over time, it has consistently revolved around the notion that common goals and drives are to be found in all sub-systems, including crime. Further, it does not discount hierarchies and system changes, but instead views them as necessary and civilized (Merton 1938, Merton 1997, Wright & Hilbert 1980).

Conflict theory offers a more cynical, yet perhaps more realistic view of the world. Collins (1974) seemed to characterize conflict theory best by the Marxian principle of self-interest. Using conflict theory, humans are all motivated by getting ahead and preserving our own stock in the world. Thus, it is rich versus poor, and black versus white, etc. The bonds that tie the rich white man are similar to the bonds that tie the poor black man. The reason for crime and violence is the struggle of the "haves" and the "have nots." This is a very rudimentary summary of consensus and conflict theories. (For more detailed information see also Bernard 1983.)

CHAPTER 2. LITERATURE REVIEW

The literature review is organized in to subsections of police, sentencing, and corrections discretion. Further, there is a discussion on the research that has been done specifically in federal probation discretion. Finally, I present my questions and hypotheses for this study.

Discretion in Policing

In 1966, Black and Reiss looked at three major cities and their police forces. Officer's interactions and decision-making with juveniles as it related to the probability of arrest were observed. Based on the research, it was determined that officers were more likely to arrest when certain factors were present in a particular situation. These factors included seriousness of alleged offense, preferences of citizens in complaints, situational evidence linking juvenile to the offense, and respect shown by juvenile towards officers. Black juveniles were more likely to be arrest than white juveniles, but the research did not find a basis for racial discrimination by officers. Thus, the study found that officers were making decisions mostly on legal issues at hand, but were still influenced by the desires of the community at large (Black and Reiss, 1970).

In an important early study of police discretion, Black (1970) observed police officers from three major U.S. cities and found there were certain causations of arrest. Specifically, if the crime was a felony, or committed by someone the citizen victim did not know, or the subject was defiant towards officers, the subject had a significantly greater chance of arrest (Black). However, Black found that racial bias was not a factor in a determination to arrest. Although this information is not ground breaking news by today's standards, Black's work

helped develop our better understanding of police discretion we accept as standard knowledge today.

Other researchers have specifically focused on three sources of police discretion: environment, administration, and individuality (Dantzker, 1995, p 182). Environment can be the officer handling various situations alone with little or no supervision, as is often the case. Administration is the application of the law and the knowledge of the system as a whole in terms of priorities. For example, perhaps a local prosecutor's office has an on-going anti-prostitution effort and is less interested in pursuing petty theft cases. Officers would be asked to focus their efforts at arresting in prostitutes and those that solicit them. Individuality is the acknowledgement that each officer is different and brings his or her own personality to the job (Dantzker, 1995, p 182-184).

In a 1975 report, qualitative observations of the Chicago Police Department were made and evaluated within the function of discretion of officers. Both Davis (1975) and Dantzker (1995) suggested there is much deception about how laws were selectively enforced, as the police were providing the public with a false "full enforcement" view. Davis criticized the practice of allowing line officers a great deal of discretion in their positions. For example, Davis concludes that, "A patrolman should not have discretion about overall enforcement policy but should have discretion to do the needed individualizing in applying the policy made by his supervisors to the facts and circumstances of each particular case" (1975, p 171).

For example, in dealing with the mentally ill, police officers are forced to make one of three choices: informal resolution, arrest and transport to jail, or transport to a mental hospital (Teplin, 2000). Officers are often under-trained or have few options on how to

handle the mentally ill who commit crimes and/or are simply viewed as a public nuisance. This led to calls for improved communication between police and mental health professionals to avoid the current trend of imprisoning versus treating the mentally ill (Teplin, 2000). One study found that mental health patients were 4.4 times as likely than the general population to be charged with a crime (Pandiani et al., 2000). This number increased in females to 8.1 times as likely for mental health patients to be charged versus the general population of women (Pandiani et. al., 2000).

Juveniles have also been extensively studied in their contact with police officers. In their study, Piliavin and Briar (1964) found that officers used discretion in making determinations of who is arrested and who is not. The basis for this discretionary decision was the juvenile's demeanor, appearance, prior offenses, and race (Piliavin and Blair). Officers believed that certain juveniles just looked like delinquent juveniles and therefore, asserted that they deserved more attention in the community (Piliavin and Blair).

Race and socioeconomic status were not contributing factors in arrest when studied by Weiner and Willie (1971). Instead, they found that officers specifically assigned to deal with juveniles had avoided the race and socioeconomic bias found by other researchers when dealing with the general public. The authors contributed this finding to most likely having to do with the organization having a specialized juvenile unit (Weiner and Willie). The officers in the unit had specialized training and expectations of the organization in working with the juveniles. Organizational controls over discretion can be effective in such a situation (Weiner and Willie).

Critics of discretion (see Atkins and Porgrebin; Homant and Kennedy) often equate discretion with discrimination. Without proper controls on discretion, critics say discretion

becomes dysfunctional and thus, so does the whole criminal justice system. In Atkins and Progrebin (1978), they examined the work of the American Friends Service Committee. This group suggested that the "true" function of discretion was: increase managerial efficiency; political expediency; to do the publicly unmentionable; to protect one's own kind; and to increase the sense of the agent's adequacy (p 36-39). They called for the elimination of discretion in the criminal justice field.

Proponents of discretion share a differing view. Cox (1996) states, "Discretion is a normal, desirable, and unavoidable part of policing that exists at all levels within the police department" (p 46). The system would come to a halt if every single law is fully enforced every single time it was violated. For example, if the New York City Police Department were to fully enforce just two of their laws, jaywalking and running red lights, officers would never be available to handle the robberies, burglaries, and homicides. Therefore, historically, law enforcement administrators, officers, prosecutors, and judges have utilized discretion daily.

Davis goes as far as to say that,

> Police discretion is absolutely essential. It cannot be eliminated. Any effort to eliminate it would be ridiculous. Discretion is the essence of police work, both in law enforcement and in service activities. Police work without discretion would be like something like a human torso without legs, arms, or head (1975, p 140).

The Texas Criminal Justice Council printed *Model Rules for Law Enforcement Officers: A Manual on Police Discretion* in 1974. This 588-page document was the response to Davis' call for more guided rules and governance of discretionary practices of law enforcement. The Council stated the project's goal was "...to provide law enforcement officers and administrators... with model rules and procedures in a variety of sensitive and

complex areas of police activity" (1974, p i). This was only one example of the identified need to place some level of control on officer discretion by organizational structure and control.

Carter went as far as to state, "Without police discretion, it is doubtful whether the system could survive or at least maintain any degree of stability" (1985, p 239). It can be argued that police discretion is essential to justice and the functioning of the system (Carter). When officers are not allowed to make judgments about the severity, nature, and totality of a situation, the system will fall. One hundred percent enforcement of the law is not possible, and it is not healthy for society and the system as a whole.

However, measures must be in place to keep the system in check because discretion should not be synonymous with discrimination, as the critics of discretion contend. The decision to arrest a subject of investigation based on one's ethnicity, gender, race, etc. is not a valid arrest. Officers must understand individual and organizational discrimination in order to understand and justify their actions.

Police have come under scrutiny and study for their use of force relating to citizens (Homant & Kennedy, 1985; Terrill & Mastrofski, 2002). When officers deal with the young, nonwhite, poor male, there is an increased likelihood of police officer use of force (Terrill & Mastrofski, 2002). When those officers are inexperienced and less educated than their fellow officers, there is also an increased likelihood of use of force. A subject in an urban setting, when meeting the above criteria, is more likely to have a force-related altercation with officers and go to jail than the person who does not meet the criteria. Thus, administrators and trainers need to work with officers to make sure the incidents happened because of the subjects behaviors, not the attitudes and reactions of the officers.

Citizen complaints are often related to the manner in which officer's engage in their duties. Wagner and Decker (1989) suggested improvements to the citizen review panels in order to more effectively police the police by better handling of citizen complaints. They stated, "It seems imperative that citizen involvement be integrated into the police structure, but in such a way as to preserve the ability of the police to monitor themselves" (Wagner & Decker, 1989, p 283). Not only do citizens need to monitor police conduct, but also the police need to learn to effectively monitor themselves to maintain morale and confidence in their actions.

Additionally, it appears citizen opinion of police may be related to how police use their power of discretion. In turn, this use of discretion may cause citizens to form either positive or negative opinions of police. One such example was found in law enforcement be actively involved in neighborhood associations. When reasonable goals were established in groups including both police and citizens, both benefit form structured, measurable discretion by officers (Pepinsky, 1984). Citizen's opinion of officers was not simply shaped by seeing officers arrest someone they may or may not like in their neighborhood, but also by the belief that officers were being pro-active to the citizen's needs (i.e. more patrols around the neighborhood parks, etc.). Pepinsky stated, "If the approach succeeded in establishing substantial bonds of trust between officers and community members, discretion both in officer behavior and in community evaluation would be equated with justice rather than seen as threatening" (1984, p 263).

The organization of police work is in itself discretionary. Within the actions of officers and possible reactions by police administrators lies the model by which a policing agency will function. For example, if the administrators are slow or even fail to react to clear

incidences of police brutality, this sends the message to officers that brutality is acceptable. In contrast, if an officer is severely reprimanded and/or terminated from his job for brutality, this message is also very clear. However, poor decision-making often times starts as poor administration and poor training. As stated by researcher George A. Hayden, "The isolated nature of the police mission demands that administrators develop in their men a fervent desire to understand and conform to appropriate standards, a desire so strong as to transcend the gap between the classroom and the street" (1985, p 303-304).

Police organization can be defined by looking at its composition, consisting of the "... degree of bureaucracy and professionalism, size of police organization, stability of assignment, and supervisor span of control" (Brooks, 1989, p 126). If a system is too big and impersonal, the bureaucracy can be too dense and confusing for officers. The old expression "too many Chiefs and not enough Indians" seems to fit. Multiple memorandums from many supervisors might confuse an officer to the point of not knowing how to react in a certain situation. Size of the department may lend itself to this end as well.

Rotating shift assignments and changing duties (undercover drug detective, Captain, patrol officer, etc.) can affect the way an officer functions (Brooks, 1989). If an officer is used to patrolling a certain area and is moved to another area where the connections on the street (i.e. informants, citizen friendships, etc.) are weaker, the officer may feel less confident, and thus the ability to make wise discretionary decisions may be compromised.

The supervisor span of control looks at how officers and supervisors relate to one another and mostly to the ratio of officers to supervisors (Brooks, 1989). The more supervisors per officer, the more "supervised" an officer may feel. Officers may not feel the

freedom to make decisions on their own without checking first. Discretion is therefore limited in these situations.

Through the years, a multitude of studies have been conducted at the individual officer level of policing. These studies tend to use labeling theory to place officers within one specific type of officer or another. These "types" of officers have produced a vast array of labels from "enforcers" to "avoiders" (Muir, 1977). These labels are used to describe officers who apply their duties in various ways, but perhaps in one linear style. That is to say officers may view their job as simply enforcing the law and not to assist in other social areas (i.e. Muir's "enforcer").

One such labeling system found four types of officers. It is important to examine the types and consider how the officer might utilize discretion in his or her police work. As you will see, it is possible for officers to react vastly different to the same situation.

The first type of police officer is the "lawman" (Hochstedler, 1981). The lawman is very similar to the "enforcer" as described by Muir. The focus is on making arrests and strict enforcement of the law with everything else falling under not being true police work. In the case of a teenaged shoplifter with no prior criminal record, this officer makes the arrest and referral for prosecution because the law was broken, period.

The second type of police officer is the "servant" (Hochstedler, 1981). Other officers often label the servant as the social worker of the bunch. This officer's focus in one helping with societal issues and personal problems and strict law enforcement is a lesser concern. The officer might take the same teenage shoplifter previously described home, and refer the parents to services. The officer might smooth things over with the store manager, and

convince the manager that letting the parents and the officer handle it would be best. This use of discretion would keep the juvenile out of the court system, at least in this incidence.

The third type of police officer is the "shirker" Hochstedler, 1981). The shirker is most interested in doing nothing. When called out on a call, the officer may delay going in hopes the situation will take care of itself before the officer gets there. I have often times overheard officers describe the "old timers," or officers close to retirement, in this manner. They no longer have the youthful enthusiasm to rush into situations that may require a lot of work, injury, or stress. This officer might just simply tell the teenage shoplifter to knock it off and would release the teenager back to the streets. This type of discretion could work to either give the teenager break/teach them a mild lesson, or it could allow for the teenager to believe stealing is no big deal.

The fourth type of police officer is the "ideal" (Hochstedler, 1981). The ideal officer uses a fine balance between enforcement, assistance to citizens, and the rights of individuals. This officer would respond to the teenage shoplifter with a flexible, multilevel approach. The officer might arrive to the scene and determine the teenager's attitude, the attitude of the store manager, the amount of potential loss by the store, etc. In other words, the totality of the situation would be considered by the officer in making a discretionary decision of what to do with the teenager. Perhaps the outcome is exactly like that of the "lawman," "servant," or "shirker," but it was not decided before the "ideal" officer even arrived to the scene, unlike the others.

In a related study, Wortley (2003) found that the "service-oriented" officer was more likely to believe in the effective use of discretion, whereas "legalistic" officers thought discretion interferes with enforcement of the law equitably. Also, the "watchman" focused

on authoritarianism, ethnocentrism, and a belief in individual caused crime (2003). Thus, the type of officer may influence the type of discretion and/or use of discretion at all.

Police officer cynicism may also factor in to police discretion. The "shirker" described by Hochstedler is one example of a possible cynical officer. The attitude of "Why should I care?" and "Does it really matter what I do?" could be found in the "shirker" officer. Surveys of officers and research of officers have found some levels of cynicism to exist in the ranks (Crawford & Crawford, 1983; Regoli, et al., 1990; Graves, 1996; Lester, 1980). Anyone who has worked around law enforcement witnesses cynical officers. They tend to struggle with the idealistic visions they had when entering the system versus the realities they face daily in the streets (Graves, 1996).

Crawford and Crawford found that officers felt the system interferes with "adequate control of crime" (1983, p 294). Thus, why not try to "work around" the system to get the desired result? This is the unhealthy and inappropriate use of discretion caused by cynical officers. Fortunately, there are more officers that have positive than negative attitudes towards the job. Graves found the highest levels of officer cynicism to be during the first ten years of service and then tapering off (1996). It appears the commitment to the long-standing values of professional ethics and training help offset the development of cynical officers (Graves, 1996; Regoli et. al., 1990).

Why the need to control officer discretion? Fairchild (1978) stated,

> Nowhere in government is the use of discretion of more intense concern... than in the criminal justice system where the power of the state is aligned against the individual, who faces the possibility of loss of life, liberty, property, esteem, and future earning power as a result of being convicted or even accused of a crime (p 442).

Fairchild suggests three types of controls on police discretion: 1) control through departmental rules; 2) control through community pressures; and 3) control through changes in officer decision-making capacity (1978). Although ideal, these types of controls on policing can be difficult to implement.

The most recent trend of policing has been towards community policing. Novak et al. (2002) suggested this trend could lead to greater levels of discretion by police. However, Novak et al. didn't view this necessarily as all bad. Instead, they found that community police officers were less likely to base discretionary decisions on race and gender. From this, Norvak et al. concluded "... increased discretion inherent to community policing may be exercised in an evenhanded fashion" (p 91).

Similarly, Mastrofski, Worden, and Snipes (1995) studied police officers in Richmond, VA, as they transitioned toward a model of community policing. Critics of community policing were concerned the model may allow for extralegal issues to become the focus instead of legal factors. Instead, this study found that officers did not use extralegal factors (i.e. race, gender, age, demeanor) as determining factors in arrest. The research concluded that officers based their decisions mostly on legal factors (i.e. evidence that a crime occurred) (Mastrofski et al.).

Although there appears to be no true consensus as to scope, effectiveness, and methods of controlling discretion, the literature seems to point to the fact that discretion will continue to be at the heart of policing.

Discretion in Sentencing

Discretion in prosecuting and sentencing individuals has existed since the justice system was established. As it relates to the federal system, discretion has been viewed as

pre-guidelines and post-guidelines. In 1984, the Sentencing Reform Act of 1984 was pasted as law. The U.S. Sentencing Commission was formed, and in November of 1987, the U.S. Sentencing Guidelines to sentencing federal offenders were enacted. The guidelines were aimed at reducing the disparity between federal judges, controlling the prison population, and providing "truth in sentencing" of offenders (Hofer et al., 1999).

A recent self-review of the past fifteen years of the sentencing guidelines was recently completed by the U.S. Sentencing Commission (Hofer et al., 2004). Although the Commission readily admits the guidelines are not prefect, the Commission found from reviewing both internal and external research that things are better post-guidelines versus pre-guidelines. Specifically, the Commission reported decreases in disparity in sentences between defendants. They stated, "Sentencing reform has had its greatest impact controlling disparity arising from the source at which the guidelines themselves were targeted- judicial discretion" (Hofer et al., 2004, p xvi). Although the transparency of the actual judicial sentencing has improved, the Commission admits great disparity remains with plea bargains, substantial assistant to the Government, etc. Therefore, it remains a source of great debate for both the proponents and opponents of the guidelines as to whether or not they have truly brought about fairness and equality in sentencing.

Albonetti (1997) addressed the issue of the disparity amongst drug offenders sentenced from 1991 to 1992. Contrary to the goal of reduced disparity in use of the guidelines, Albonetti found significant relationships between offender's ethnicity, gender, educational level, and non-citizenship resulting in harsher sentences. Although these factors are to be considered legally irrelevant by the guidelines, Albonetti found patterns of still allowing disparity/discretion in sentencing.

Relating to sentencing severity, Albonetti advised that her findings, "... suggest that the mechanism by which the federal guidelines permit the exercise of discretion operates to the disadvantage of minority defendants" (1997, p. 818). Albonetti pointed to the continued use of "substantial assistance" (helping the government catch and prosecute other offenders) and "acceptance of responsibility" (admitting wrong doing to the court) as two key factors in sentencing disparity.

In a similar study, researchers looked at one federal circuit's sentencings conducted from 1993-1994 (Kempf-Leonard and Sample, 2001). As in Albonetti's study, Kempf-Leonard and Sample found certain offenders were likely to receive harsher sentences based on factors of age, race, poverty, and gender. In general, they found that, "... sentencing decisions are dictated in large part by relevant legal factors, but that demographic traits and personal circumstances do have a negative influence on the case outcome for some defendants" (Kempf-Leonard and Sample, 2001, p 135-36).

However, the authors were not willing to deny the usefulness of discretion within a sentencing system. They suggested, "Discretion must be structured within an effective processing system, but it also must be allowed" (Kempf-Leonard and Sample, 2001, p 137). The authors suggested providing the courts with alternative solutions and options within a more rational sentencing system.

Not all researchers have found the guidelines to be ineffective. Some have found the guidelines have had modest but meaningful success at reducing disparity among judges (Hofer et al., 1999). This is not to say they found the system was without flaws. In their work, they found than discretion was found at many levels in a multitude of ways.

One way the judicial system (i.e. judges, prosecutors, defense attorney's, and probation officers) demonstrated resistance to the controls of the guidelines was through finding new ways to still allow for discretion. With the use of "hidden" departures, specific plea agreements, and prosecutorial discretion to name a few, the system was trying to continue the use of discretion in sentencing individuals. As the researchers mentioned, "These bring back into the system some of the flexibility that judge, attorneys, and probation officers think is needed to keep the system working and to avoid unfairness" (Hofer et al., 1999, p 304).

Other research offers the alternative view by stating that the courts and probation officers are merely agents of the state (Kingsnorth et al., 1999). These researchers offer the notion that the pre-sentence investigation report (PSIR) is evidence of the lack of individualism within the system. They suggest the PSIR has little to do with an independent investigation in to the person's history and account of the crime. Further, they found that judges rarely departed from prescribed decisions towards the recommendations of the probation officer, particularly if the recommendation was more severe (Kingsnorth et al., 1999).

In furtherance of this notion, some research has found the guidelines have shifted the discretion from the probation officer and the court toward the prosecutor (Reitz, 1998). With increased mandatory penalties, many of them quite severe, and little discretion allowed to the court, the prosecutor often ends up holding the power of discretion. Rainsville found that decisions made by prosecutors related to sentence recommendations had more to do with their personal values and available correctional options than any other factor (2001).

A multitude of factors can influence discretion in sentencing. A large volume of research has been done in to the specific factors of sentencing individuals. For example, without a great deal of surprise, factors such as one's prior criminal record adversely affect the amount of time one might be sentenced to serve on any new conviction (Vigorita, 2001). Further, Vigorita found the type of prior offenses, incarcerations, and arrest provided the highest levels of correlation to being sentenced to imprisonment on new offenses.

Whether it is the development and passing of laws, or the administration of justice by the courts, the issue of minorities being affected by discretionary decisions will continue to be studied and evaluated. There is no clear and easy answer to why blacks comprise 12.1% of the U.S. population, yet comprise 33.8% of the Federal Bureau of Prisons population (Free, 1997). One factor some suggest is the mandatory minimums created by Congress force judges to sentence offenders of drug violations (especially crack cocaine) to long terms of imprisonment (Free; and Provine, 1998). One federal judge even accused Congress of racial bias in developing the laws for crack cocaine (Provine).

Other researchers found less broad and wide-reaching discretion within the courts when it comes to minority related issues. For example, McGuire (2002), found that race was a factor at detention and commitment stages of the judicial process in juveniles, she found that it was not a factor at the adjudication stage. Thus, she concluded that perhaps the guiding factors of application of the law were the focus at the time of adjudication, but more discretion was afforded juvenile judges at the time of determining commitment (McGuire).

Should it matter at the time of prosecution, judgment, and sentencing if you are male or female if one commits the exact same crime? According to a study completed by Williams (1999), females were more likely to have both legally relevant and non-relevant factors

considered, whereas males were likely to only have relevant legal factors considered. Thus, males were more likely, even with a structured guideline system, to be incarcerated for longer periods of time than women (Williams).

The so-called "white-collar" crimes are also a factor in determining probation versus a lengthy prison sentence. Should it matter in determining one's sentence if one is stealing a million dollars from the bank where one is employed or selling a million dollars worth of drugs on the street? Whether or not it should matter is left for continued debate. The reality is that it matters significantly in most courts, and specifically in federal court. Albonetti (1999) studied the issue of white-collar offenses and found specific factors that allowed offenders to escape harsh punishment. She found the unique, and often complex nature of white-collar offenses and plea agreements were directly and indirectly related to decisions to suspend incarceration. Furthermore, Albonetti found some moderate connections that the offender's position within the "...stratification system (i.e. gender, race, education, financial assets, impeccability)..." translated into a higher likelihood of suspended sentences (p 322-323).

It would be this author's opinion that just because some of the external factors (i.e. race, gender, etc.) may influence discretion within the court system, that the influence is not without some merit. As the old saying goes, if you only have a hammer in your toolbox, everything begins to look like a nail. A judicial system without some level of adaptability and individualism becomes too rigid and fails to see the uniqueness of each person that comes in to contact with the system.

Although the system has historically fluctuated between rigidity and liberal applications of the law, the trend over the past few decades has been towards determinate

sentencing (i.e. U.S. Sentencing Guidelines) (Griset, 1996). Determinate sentencing often is the legislator's attempt at uniformity confined within a rigid, structured judicial system. In my opinion, it tends to be the hammer with everyone looking like a nail. For example, Person A's sentence for conspiracy to distribute cocaine should be similar, if not the same, as Person B's sentence for the same crime. It fails to take into account they may have completely different backgrounds. One may be better suited for rehabilitation versus the other being a career criminal.

Griset (1996) studied the sentencing and administrative discretion within the Florida system. Her findings suggest that even when the public and legislators try to remove the flexibility and discretion from the system, correctional administrators still found methods to apply discretion to individual cases. I agree with Griset that there exists the myth of determinate sentencing while in reality some levels of discretion continue in the system.

The most recent assault on determinate sentencing can be found in the January 12, 2005, decision by the U.S. Supreme Court. In *U.S. v Booker,* the court held that the guidelines were a violation of the Sixth Amendment to the U.S. Constitution. Booker had appealed his case based on the district court judge's decision to increase his sentence based upon a preponderance of additional evidence that had not been previously determined by the jury. The Supreme Court determined that a jury must hear the evidence or the individual charged must admit to the evidence in order to have enhancements placed upon the sentence. The court further ruled that the mandatory nature of the guidelines is not consistent with the Sixth Amendment and the court's prior ruling on *U.S. v Blakely,* a similar state case heard by the court. (http://www.ussc.gov/Blakely/04-104.pdf)

Currently, the function of the guidelines is in question. I have heard that some judges are pleased with the new ruling because they feel the guidelines are now suspect. I have also heard the opposite effect that some judges are concerned about finding appropriate and consistent sentences. During a recent meeting with the Sentencing Commission, I was presented with data suggesting the *Booker* decision was having less of an impact on sentences than expected, about a five percent decrease overall of courts staying within the guidelines. In other words, judges are still applying the guidelines most of time and using discretion to depart only in certain cases.

In the spring of 2005, I witnessed the sentencing of a two-time prior convicted drug felon. She was facing a sentence range of 30 years to life imprisonment via the federal guidelines. However, the judge, citing the Blakely decision, felt the best sentence given the totality of the circumstances was ten years, the mandatory minimum sentence by law. As is the trend with sentences under Blakely, the judge used discretion to apply the law to the individual. This is a big change for the federal judicial system as it returns discretion to the courts.

Discretion in Corrections

It is not just police officers and judges that face tough legal and moral decisions that affect society and the freedoms of individuals. Studies of discretion in corrections are not new, but are less pervasive than studies of discretion in policing and sentencing.

Liebling (2000) looked at relating the studies of police discretion to correctional officer discretion. She found that correctional officers have a great deal of discretion. Liebling stated:

> They make choices, use judgements, [sic] sometimes to achieve justice, where the rules do not work, and sometimes to assert their authority... Like police officers, prison officers made efforts to provide security, stability and safety in prison (as in the community) through surveillance, the threat of sanctioning and the art of persuasion (2000, p 343-344).

Liebling found that correctional officers were more likely to underutilize their power than use it, and this was more effective. She asserted that officers could be better described as "specialists in mediation and arbitration" at times (2000, p 347).

In exploring organizational pressures and expectations upon discretion in corrections, Hawkins (1986) focused on parole boards. The findings suggested the parole board's ultimate decision on whether to release an inmate or not fell toward responding to the form of the conduct by the parolee rather than the content itself (Hawkins). Thus, the decision was based upon being predictable and maintaining the delicate balance of control within the institution, both of prisoners and of staff confidence. Discretion in this context was limited by the appearance of consistency, whether truly applied or not.

Shover and Einstadter (1988) reviewed the work of several authors in the area of discretion in corrections. One study by Takagi and Robinson in 1969 looked at 316 parole agency employees' decisions of ten actual case studies. The cases advised of "suspected parole violations" and required the employees to make a determination as to revoke or continue the parolee. The results indicated that the judgments varied widely amongst the employees (1988).

Shover and Einstadter (1988) also looked at Carter and Wilkins' 1967 study of 14 federal probation officers and their use of materials and information in the file in arriving at a decision. Officers were allowed only one piece of information at a time, and researchers noted the order in which they looked at the materials. From Carter and Wilkins observations,

they noted that officers "... followed a common basic pattern that was still somehow unique..." to each officer, and they rarely changed their minds even when presented with additional information (1967: 209; Shover & Einstadter, 1988).

In their review of the 1956 publication by Lloyd Ohlin et al., Shover and Einstadter (1988) discussed three types of parole officers: punitive, protective, and welfare. Ohlin and associates were some of the first to attempt classification of the various types of officer typologies. This study was particularly useful in the consideration that parole officer personalities, backgrounds, and perspectives can play a role in discretion within the system. It also demonstrated the strain officers can feel when trying to punish the offender, protect the community, and treat or rehabilitate the offender. This type of research provided insight to officer personality issues within community corrections.

The juvenile justice system has been subject to some research in the area of officer discretion as well. Resse et al. (1988) studied 87 Juvenile Probation Officers (JPO's) in the southwestern United States, and had each officer complete a survey recommending three possible dispositions on one standard test case. They found that, "Despite the JPO's working from a standardized research case and within a single organization with a specific philosophy, jurisdictional procedure, and family code, considerable diversity resulted" (1988, p 88). Resse et al. termed their findings the "JPO factor" due to the wide variety of results from individual officers for one specific case (1988). From their work, Resse et al. called for more "standardization" of the juvenile justice system (p 96).

Upon further analysis of the same data set, Reese et al. (1989) found the experience of the JPO is what matter most in terms of discretionary decision making. Younger, less experienced JPOs tended to be more by the book type officers while more senior JPOs

tended to have and use greater levels of discretion in handling young offenders (Reese et. al.). The study pointed out the conflict in which the juvenile correctional system operates; rehabilitation of the juvenile and protection of the community. Thus, the very nature of the two goals of the organization are often in direct conflict with each other (Reese et. al.).

In a study of bias in the juvenile court system, Dannefer and Schutt (1982) found that bias does exist, but suggested it appeared to be more of a product of the social environment and/or social context from which it was found. In some places, the police showed bias against black and Hispanic juveniles, but the courts tended to offset the bias by exercising judicial discretion (Dannefer and Schutt). Thus, Dannefer and Schutt suggested further research on why bias was occurring, not if it was occurring.

McCleary (1978) picked up on the notion of power being found within groups versus individuals. McCleary best demonstrated this point via a comment made to him by a parolee.

> Your PO can do whatever he wants and there's nothing you can do about it. If he says you're going back to the joint, that's all there is to it. All he's got to do is say that you didn't report or something like that. Who's going to say different? It's your word against his and nobody's going to believe you (1978, p 79).

McCleary advised that one should not be tricked by the perception of true unlimited discretion versus restricted discretion. In his study of District of Columbia parole officers, he stated,

> In practice the exercise of power is constrained by a set of structures. A PO may get away with exercising his power in a few cases, and in these cases, the effect is so striking as to give the impression that the PO is omnipotent (1979, p 79-80).

McCleary then reminds us that when using discretionary power, a PO can "bring heat down" on the office via media, administration, and other external sources (p 80). Thus, McCleary asserted the actual practice of discretion was limited in parole. He suggested that

only ten in one hundred clients on an officer's caseload received "special" discretionary treatment (p 100).

It is the notion of special treatment, negligence, power, and discretion that has lead to some liability for probation and parole officers. Morgan et al. (1997) provided an excellent overview of the liabilities facing officers if they act outside the scope of their duties. Morgan et al. defined ministerial (timely tasks within normal duty for an officer) versus discretionary decisions. In terms of discretionary acts of an officer, Morgan et al. found discretionary acts did not usually carry a level of liability. However, they sited volumes of case law of the courts ruling against officers when they are found to have been negligent in their duties to protect third parties.

According to Morgan et al. (1997), officers are often protected by either quasi-judicial immunity or qualified immunity. Quasi-judicial immunity affords a probation or parole officer similar protection as the court (absolute immunity) when officers are carrying out the direct orders of the court. It falls under qualified immunity when officers acted in their official duties and when a "reasonable person" would have acted in such a way within the established laws. However, it should be noted that neither are full proof defenses, and officers must continually gauge the appropriateness and function of their use of discretion.

In his work on protections granted the public servant, Lee points out the importance of "objective reasonableness" as the standard established by the Supreme Court (2004). Lee summarized it best by stating,

> The conduct of public officials is deemed objectively reasonable, and hence deserving of the defense of qualified immunity from suit, if and when the official's conduct does not violate sufficiently clearly established statutory or constitutional rights that a reasonable person in his or her position would have known (2004, p 433).

Thus, discretion in their duties by probation officers, as public servants, must be guided under legal, moral, and ethical guidelines that a reasonable person would operate.

Another general study of discretion within probation supervision was found in the dissertation work of James J. Golbin in 1989. Perhaps most striking was Golbin's observation that,

> The first and foremost issue that has yet to be resolved is the identification of the determinants of discretionary decision-making in the probation supervision setting. Although there has been research in other decision points of the criminal justice system, there is a void of research in the probation supervision setting (1989, p 76).

Golbin set out to further study the issue by using three varying sources of information including the sociological "labeling and positivist perspectives, applied criminal justice research, and... predictive technology..." (1989, p 76). Although he looked at both discretionary decision-making in early terminations and violation of probation sample, the violation of probation sample most directly related to this study.

Not surprisingly, Golbin found violations in probation cases were less likely to be pursued if the offender lived with family, was of higher socio-economic status, and gainfully employed full time. Likewise, if the offender was on supervision due to a misdemeanor conviction versus a felony conviction, the offender was less likely to be taken back to court. Additionally, if the offender had a lower risk assessment level, returning to court was less likely for violation behavior (1989).

Golbin compared both independent and multivariate analysis of variables such as: socio-economic status, drug/alcohol dependency, risk assessment, level of cooperation with probation officer, minority status, family structure, emotional disturbance, and probation officer's attitude toward offender prior to violation behavior (1989, p 156). Based on his

analysis, Golbin found certain variables to be most important in the decision of officers whether to return to court for violation behavior. In order of most important to least important, Golbin found the following resulted in officer's decisions to returning to court: probation officer attitude prior to violative behavior, probationer's level of cooperation, employment status, risk-assessment level, and the severity of the current offense (1989, p 164).

Based on his findings, Golbin suggested modifications in limiting officer discretion. Golbin asserted that, "Some subjectivity in the decision-making process is necessary. However, impartiality and uniformity in the probation supervision decision-making process is lacking, as are objective guidelines and criteria" (1989, p 224).

Research of Supervision in U.S. Probation

Research specific to United States Probation Officers, and specifically their use of discretion has been limited. Alfred D'Anca studied "professionalism" of federal probation officers in his doctoral work at Fordham University. D'Anca used both qualitative (interviews) and quantitative (a survey) methods of research to test 138 respondents. He used a chi square test to determine relationships among the survey items relating to the various sized offices. He found that office size did not affect decision-making choices of officers (1989).

Furthermore, D'Anca found a significant relationship between an officer's professional self-esteem and their role and relationships with judges, other professionals. D'Anca touches on "role conflict" as it relates to the work produced by the officer, but does not appear to delve completely into the topic. Instead, D'Anca suggested findings showing officers work within "consultative work environments." As such, D'Anca related that

officers have goals and must negotiate "conflicting interests with systemic network members" (1989).

Michael Stowe's (1995) dissertation entitled "Professional Orientation of Probation Officers: Ideology and Personality," also used survey methodology to study officer beliefs and attitudes towards offenders. He studied 481 United State Probation Officers and found four officer orientations using factor analysis. These orientations towards offenders were: casework, law enforcement, resource brokerage, and punishment. He predicted orientation through the use of multiple regression analysis using the four scales and independent predictor variables. In terms of personal descriptive variables, race and education were the most notable in regard to orientation. Stowe found, "Organizational or structural variables accounted for only a small percentage of the variance in orientation" (1995).

From his study, Stowe concluded that an officer's personal beliefs were the most significant in accounting for the officer's orientation. Further, he found that officers could be grouped into two basic types: conservative and liberal. Stowe asserted this information could be used to assist with training and case management and assignment (1995).

The most recent study of the Federal Probation system was completed in 2002. The Administrative Office of the U.S. Courts contracted Price Waterhouse to conduct an intensive study of The Office of Probation and Pre-Trial Services. One portion of the study was to survey magistrate and district court judges in order to gather a perspective from the judges as to the level of services provided by USPOs.

Overall, the Price Waterhouse study (2002) showed a strong response by the judges towards USPOs. Specific to this study, a few specific questions were asked of the judges in regard to USPO discretion. The first question was, "To what extent do you think that

probation officers should have discretion to address relatively minor technical violation through graduated sanctions before bringing a request for revocation?" Of the 108 District court judges responding, 47.2% selected "a great deal of discretion," 45.4% selected "some discretion," 3.7% selected "very little discretion" and another 3.7% selected "no discretion." Thus, 92.6% of district court judges felt as though discretion was necessary for USPOs in decisions regarding post-conviction supervision violations and revocations (p 5).[1]

Some of the comments from the district judges that choose to do so included:

> The probation officer should have sufficient discretion to facilitate his relationship with the offender by having the freedom to address minor technical violations that do not merit action to revoke. This would also reinforce the authority of the officer.
>
> Officers should have discretion, but the court must be kept informed.
>
> If they have discretion, specific guidelines and examples would assist them (Price Waterhouse Study, 2002, p Appendix 1, 5-6).

The district judges also were surveyed about their opinions of what the priority of USPOs in handling offenders. The following table represents their responses as to the importance of monitoring behaviors, enforcing court ordered conditions, or obtaining treatment for offenders.

[1] The Price Waterhouse Study of U.S. Magistrate Judges found that 86% also felt USPOs should have discretionary powers to handle minor violations (Magistrate Study, 2002, p. 6).

Table 1. U.S. District Judge's Opinions on Monograph 109 (Percentage)

	Less Important	Somewhat Important	Very Important
Monitoring of Offender	**1.8%**	**7.3%**	**91.0%**
Enforcing of Court Orders	**0.0%**	**18.5%**	**81.5%**
Obtaining Treatment Services	**1.9%**	**16.7%**	**81.5%**

(Price Waterhouse Study, 2002, p. 6)

Although Table 1 does not represent a priority rank ordering of the "trinity" of supervision of offenders, the results demonstrate district judges believe the focus should be on the monitoring of offender's behaviors. Equally important to the district judges was the monitoring and enforcement of the court order and obtaining treatment services for offenders. However, what appears most impressive about these results was the determination that officers must be dynamic enough to be highly skilled in all of the areas. The district courts expect officers to place high importance in all of these areas, almost equally across the board.

The findings of Price Waterhouse, along with the important work of D'Anca and Stowe, stirs unanswered questions of: 1) how officers perceive and act upon their duties (discretion), and 2) what influences the decisions of officers. There continues to be a void of research in this area, and this research was an attempt to begin to address it.

The Questions & Hypotheses

The purpose of this study was to extend the work of D'Anca and Stowe by defining officer discretion and esxamine United States Probation Officers (USPOs) in the Eighth Circuit. The study began with two main questions. They are as follows:

1) Do U.S. Probation Officers practice some levels of discretion over decisions addressing violation behavior of post-conviction supervision of offenders?
2) Are U.S. Probation Officer's levels of discretion in post-conviction decisions influenced by the sub-cultures within the system?

Based on these two research questions, I hypothesized that officers did practice some levels of discretion in addressing violation behavior of offenders. Further, I hypothesized that officer attention to the sub-cultures within the system environment would affect discretion.

CHAPTER 3. DEFINITIONS AND SURVEY

Definitions

For purposes of this research, discretion was defined as an officer making a choice between options, given an officer's knowledge, experience, expectations, and education. In some settings, discretion can be as simple as a "yes or no" decision. However, I would assert in the field of post-conviction supervision of offenders, officers have many levels of decision-making to do in each situation presented.

Not only must officers consider what might be best for the offender, the officers must consider the court orders, administration expectations, protection of the community, and many other underlying issues. Thus, for purposes of this research, "officer attention to…" relates to officers consciously indicating they consider the expectations of other entities outside themselves when making discretionary decisions.

Sub-cultures in this context would be defined as the various levels and types of external influences in decision-making. Examples of external influences or expectations an officer might face would include federal judges, probation administration, and the community as a whole. Officers tend to walk a fine line of balancing the interests of these three main entities in working with offenders.

In the context of this research, post-conviction supervision can be defined as the monitoring, enforcement of the court orders, and the rehabilitation of federal felons after the court sentences them. Again, one can see the basic three areas of requirements upon officers in working with offenders.

Survey Instrument

Background of the Study

Based on the past work of D'Anca and Stowe, survey methodology appears to be both an effective and efficient method of gathering officer data. Neuman (2000) found that surveys are most effective when considering qualitative data such as behavior, attitudes/beliefs/opinions, characteristics, expectations, self-classification, and knowledge (p 247). Additionally, surveys can be coded and checked for validity in terms of bivariate associations. Further, regression analysis, statistical (significance) comparisons, and percentages are standard in survey analysis and to issues of validity.

Specific to this research, due to the vast area of the subject area (the Eighth Circuit of the U.S. Courts), the survey was also an efficient means by which to gather the most detailed data from approximately 140 officers from ten different districts.

The thirty-five questions used in the survey were developed with the assistance of Dr. Andrew Hochstetler, Professor of Sociology at Iowa State University. Through a process of submission and revision, Dr. Hochstetler and I refined the survey questions for the purpose of seeking the best possible focus on officers making discretionary choices in both practical case studies and in general philosophy.

It should be noted that at the time of the survey development, we were not aware of the work of D'Anca and Stowe. It was only after the development of the survey that these author's works were discovered. Although the survey does not use direct questions or language from the surveys of D'Anca or Stowe, this author was able to review their work and draw the general conclusion that this survey is similar in style, but different in content than of the other surveys. Thus, this survey requires extra levels of testing for validity.

Statement to Respondents

Only officers that provided direct supervision of post-conviction offenders within the community were asked to complete a survey. Respondents were advised the results of the survey would only be used for statistical comparisons, and participant identities would remain strictly anonymous.

Location and Rank

Respondents were asked to provide the name and location of the district in which they work. They were asked to list their rank U.S Probation Officer (USPO=0), Senior U.S. Probation Officer (SrUSPO=1), Supervising U.S. Probation Officer (SUSPO=2) Deputy Chief U.S. Probation Officer (DCUSPO=3), Chief U.S. Probation Officer (CUSPO=4). They were asked how long (in months) they had been at least a USPO in rank and how long (in months) they have supervised offenders in the community.

Demographic Variables

Three demographic or background variables were included in the study. Education was measured by the highest degree attained (Bachelors=0, Masters=1, PhD=2). Area of study was measured by five topical areas and combined to three groupings (Criminal Justice/Corrections=0; Law Degree; Psychology; Public Administration; Sociology/Social Work and Other=1; Both=2). Sex was coded Female=0; Male=1.

Duties

Duties performed by officers were measured by specialties and coded using: (No=0; Yes=1). These included the following options:

Pre-Trial

Pre-Sentence

Electronic Monitoring

Mental Health Specialist

Drug/Alcohol Specialist

Other

Percentage of Time

What percentage of your time do you estimate that you spend on post conviction supervision cases? This was measured in percent.

Number of Officers

How many officers within your office supervise offenders within the community (post-conviction supervision only)? This was for the researchers information only and was not coded or reported.

Definitions

Respondents were provided with the following definitions for purposes of this study:

Resources are internal or external services available to an officer for use with an offender (i.e. education classes, drug treatment, etc).

Modification is the process of adjusting an offender's supervision conditions by order of the court of jurisdiction in the case (i.e. Form 12A, 12B, etc.).

Revocation is the process of bringing an offender before the court of jurisdiction for the purpose of terminating the offender's supervised release and returning the offender to prison (i.e. Form 12C).

Available Resources

Respondents are asked to state which resources were available to them in their district and how these services are paid. The purpose of these questions is to help determine if

officers have very many options available to them. If only very limited resources are available, it would make sense that officers would seek revocation more often than an officer with many "tools" in which to intervene with an offender.

Which of the following resources are available in your district? The following were the options provided to the respondents (No=0; Yes=1):

Drug treatment/counseling

Mental health treatment/counseling

Electronic monitoring

Halfway house/CCC

Educational classes in community

Educational classes led by officers

Other(s)

Payment for Resources

Of the listed resources available in your district, which resources are only funded by government funds, only paid by the offender, or could be funded by either the government or the offender? The following were the options provided to the respondents (Government=1; Offender=2; Both=3):

Drug treatment/counseling

Mental health treatment/counseling

Electronic monitoring

Halfway house/CCC

Educational classes in community

Educational classes led by officers

Other

Dependent Variables- Case Study Number One

Respondents were provided with two case studies for consideration in answering situational questions (dependent variables). The first case study read as follows:

> John is a 28 year-old male with a long history of assault and weapons charges. He is serving a three-year term of supervised release (TSR) following a period of incarceration for 110 months for Conspiracy to Distribute Methamphetamine. Besides his standard conditions, he has a drug/alcohol testing and treatment condition, a mental health evaluation condition, and an employment condition. He has been on his TSR for three months.

Respondents had the same responses to choose from for each of two different situations and the three questions that followed each situation. Thus, all are combined for this review, and listed below.

Situation #1a: John is still unemployed, and by all accounts is not actively job searching.

Situation #1b: John is employed, but has committed a new law violation (i.e. provided a law enforcement officer with a false name during a traffic stop, or stole less than $100 worth of merchandise from a department store, etc.).

What type of intervention do you believe is expected in your district?

What type of intervention would you prefer to make in this same situation?

What type of intervention would you do in this same situation?

Respondents were to select one answer from the following response categories for each question, and it was coded as follows:

No action, just verbal warning and/or encouragement=0

Referral to resource=1,

Notification to court with no action requested=2

Modification of TSR (with or without hearing)=3

Petition for revocation hearing=4

Other=5

(Additionally, a seventh option indicating multiple selections by the respondent was added=6)

Dependent Variables- Case Study Number Two

The second case study read as follows:

> Larry is a 28-year-old male with no prior criminal history and a small drug history. He is serving a three-year term of supervised release (TSR) following a period of incarceration for 34 months for two counts of Distribution of Child Pornography by Means of Interstate Commerce (Internet). Besides his standard conditions, he has twelve separate "sex offender conditions," and a drug/alcohol testing/treatment condition. He has been on his TSR for twelve months.

Respondents had the same responses to choose from for each of two different situations and the three questions that followed each situation. Thus, all are combined for this review, and listed below.

Situation #2a: Larry provided one urine sample that has tested positive for THC (marijuana).

Situation #2b: Larry has committed a new law violation (i.e. provided a law enforcement officer with a false name during a traffic stop, or stole less than $100 worth of merchandise from a department store, etc.).

What type of intervention do you believe is expected in your district?

What type of intervention would you prefer to make in this same situation?

What type of intervention would you do in this same situation?

Respondents were to select one answer from the following response categories for each question, and it was coded as follows:

No action, just verbal warning and/or encouragement=0

Referral to resource=1,

Notification to court with no action requested=2

Modification of TSR (with or without hearing)=3

Petition for revocation hearing=4

Other=5

(Additionally, a seventh option indicating multiple selections by the respondent was added=6)

Political View

Respondents were asked to describe their overall political orientation using the following descriptions: Very Liberal=1; Liberal=2; Independent=3; Conservative=4; Very Conservative=5.

In considering the work of D'Anca and Stowe, the political view officers take in approaching their duties is worthy of serious consideration. This question allows for

checking the validity of the instrument in measuring whether officer's attitudes and orientation match that of their actual decision-making.

Monograph 109 & Opinion Statements

Officers were presented with a review of the now "old" version of Monograph 109, the statement of policy from the Administration Office (A.O.) of the U.S. Courts in Washington, D.C. Monograph 109 (otherwise known at the time of the survey as the "trinity" of supervision) stated that officers should first enforce the court orders, then protect the community, and then assist the offender in any rehabilitation. Although the "trinity" has recently been modified by the A.O., the new model of circular flow uses some of the same basic principals of evaluating effective supervision of offenders.

The following 16 items examined respondent opinions or views of the national policy (Monograph 109) from the perspective of the officer and his or her district. Each item was measured with a 5-item Likert scale ranging from Very Important=5, Important=4, Neutral=3, Less Important=2, or Unimportant=1. Other items use a 5-item Likert scale ranging from Strongly Agree=5, Agree=4, Neutral=3, Disagree=2, or Strongly Disagree=1. When the response sets were the same, the questions have been combined for this disclosure only.

Your district's view of Monograph 109:

Your view of Monograph 109:

Enforcement of the court order

Protection of the community

Rehabilitation of the offender

Within my office, the decisions regarding sanctions against offender are constrained by:

legal precedent

legal culture

expectations of the citizens

Almost everyone can be rehabilitated.

Within the law, I can always impose the sanctions I want upon an offender.

My opinions are valued by my supervisor.

My opinions are valued by the court.

The court usually goes along with my recommendations to the court.

From my experience, if an officer allows an offender a second chance, there is a good chance the officer will regret it.

Officers should do as much as possible to rehabilitate an offender.

Pre-Testing the Instrument

For purposes of pre-testing the instrument, in November of 2001, the survey was completed by five USPOs, two Senior USPOs, and one SUSPO in the Des Moines and Davenport, Iowa offices. The eight officers that completed the survey were providing direct supervision of post-conviction offenders.

Results from the pre-test demonstrated the survey needed some additional refining. For example, in the case studies, the original survey asked the officers to determine what they thought their district would want them to do in each violation situation, and then what they would rather do in each violation situation. It became apparent to provide for greater detail and validity, a third question of what would the officer do in each violation situation

was needed. By adding this third question to each violation situation, officer discretion was be more apparent and measurable. This would be due to the fact that officers may or may not agree with their district's policy or sub-culture on handling certain violation behavior, and may not follow the standard course of action. However, one must consider issues of responses indicating social desirability within this same question.

Another area of improvement made to the survey was the modification from rank order questions regarding the trinity and culture to a Likert-scale format. Several officers were apparently confused by the formatting of the rank order style, and their answers had to be discarded. Thus, I determined that keeping all the questions in the last part of the survey the same could produce a more accurate and user-friendly instrument. However, some questions were reverse coded to account for response effects.

Finally, a political orientation question was added to the survey. In order to allow for independent variable control of political orientation, the specific question was added. This will allow comparison between other Likert-scale questions demonstrating an officer's use of discretion based upon their world-views in addition to other factors. Thus, the use of this type of question helped control for spurious effects within the survey.

Eighth Circuit Survey and Methodology

The sample attempted to include United States Probation Officers (USPOs) in the Eighth Circuit of the United States Courts. This region consisted of the following ten districts: Nebraska, North Dakota, South Dakota, Minnesota, Northern District of Iowa, Southern District of Iowa, Eastern District of Missouri, Western District of Missouri, Eastern District of Arkansas, and Western District of Arkansas. The target population included approximately 140 USPOs that provide post-conviction supervision of federal offenders.

The survey attempted to use the total population and not simply a random sample, as it was sent to 100% of officers in the Eighth Circuit that provide post-conviction supervision.

Additionally, I expected a higher rate of return than average of the surveys due to the assistance promised by the Supervising USPOs in distribution and collection of the surveys. I anticipated receiving back over 90% of the distributed surveys.

Further, the study was anticipated to have a high degree of external validity. This author would anticipate that this same survey presented to other U.S. Circuits and/or USPOs would result in similar findings. Although unforeseen differences may occur by region, it is reasonable to assume the results of this survey represent the greater whole of the U.S. court system. However, an example of a possible error could occur if a particular district or region only employed former certified law enforcement officers. In this example, the data may reflect a stronger law enforcement orientation than the general population and this study.

Finally, once the data was collected and entered into statistical form, it could be crosschecked by individual respondent (each officer) and/or by district to discover any significant deviation from the norm.

CHAPTER 4. DATA AND RESULTS

Survey Response

Of the 142 surveys that were submitted to the ten different districts in the Eight Circuit, 82 officers (57%) responded by completing and returned the survey. Although I had anticipated a higher response rate, the returned surveys provided a good overview of the Eight Circuit Federal Probation offices. Of note, the Eastern District of Arkansas (E/D AR) failed to return any of the surveys, and the contact person did not respond to my attempts to discover why the surveys were not returned. With the E/D AR excluded, the average number of respondents per district was nine. The Northern District of Iowa had the fewest number of respondents at six and the Eastern District of Missouri had the highest number of respondents at fourteen.

Respondents included 50 U.S. Probation Officers (USPOs) or line officers, 25 Senior USPOs (Sr USPOs), four Supervising USPOs (SUSPOs), one Deputy Chief USPO (DCUSPO), and no Chief USPOs (CUSPO). Two respondents failed to indicate their rank on the survey. This distribution of rank with larger amounts of USPOs and Sr USPOs would appear to be typical as USPOs and Sr USPOs are the ones providing the largest amount (highest caseloads) of direct supervision services of offenders. Administrative officers (SUSPOs, DCUSPOs, and CUSPOs) provide assistance to the USPOs, and less commonly have an assigned caseload of offenders to supervise.

The average number of months respondents had been at least at the rank of USPO was 90.5 months, or just over seven and one-half years. Although the range included respondents from two months to 27.8 years of service, the average demonstrates a wealth of experience by officers in the Eighth Circuit in supervising offenders. Further, respondents

indicated an average of 5.9 years of direct experience supervising offenders in the community. This figure would exclude periods of time where officers were assigned other duties such as writing presentence reports or working in other facets of federal probation.

Demographic Variables

U.S. Probation Officers (USPOs) are well educated. Of the sample of 82 respondents, 41 (50%) indicated Bachelors degree as their highest education completed, 38 (46%) Master's degree, and three (4%) had completed their Doctorate degree. It should be noted that one must have completed at least their Bachelors degree in order to obtain the entry-level position of USPO.

In terms of field of study, 25 respondents (30%) indicated Criminal Justice or Corrections as their field. Another 29 respondents (35%) indicated study in one of the following: Law, Psychology, Public Administration, Sociology/Social Work, or Other. Twenty-eight respondents (34%) indicated studies in both areas.

More males than females provide post-conviction supervision of offenders in the Eighth Circuit. The gender of respondents was comprised of 29 females (35%) and 53 males (65%).

Duties

When asked what other types of duties they perform within the office, respondents reported the following duties: 25 pretrial; 22 presentence; 42 electronic monitoring; 10 mental health; 15 drug/alcohol monitoring; and 40 other. A sampling of the "other" duties included: firearms/safety officer, contracting, gang specialist, Native American specialist, etc. It should also be noted a potential flaw with this question in that "post-conviction supervision" was not an option and several respondents wrote it in as other. The question

was intended to mean outside of the respondent's supervision duties, as in what other duties did they provided to their district.

Respondents estimated they spent an average of 78% of their time on post-conviction supervision. The respondents spent the majority of their time supervising offenders. Thus, it would appear the correct population of officers was targeted for this survey.

Available Resources/Payment of Resources

Respondents reported access for offenders to the following resources: drug treatment/counseling (99%); mental health treatment (99%); electronic monitoring (99%); halfway house (95%); educational classes in the community (90%); educational classes led by officers (12%).

When it comes to paying for these services, the government often times pays the bill, but districts are increasingly expecting offenders to pay for at least part, if not all, of the services. The majority of respondents indicated both the offender and the government pay for drug treatment/monitoring (74%), mental health (77%), electronic monitoring (87%), and halfway house placement (54%) in their districts. Even more notable is that respondents felt the government is much more likely to pay in cases where both the government and the offender are not sharing in the cost for services. This was especially true for drug treatment/monitoring (23% government pay versus 0% offender pay) and mental health (16% government pay verses 5% offender pay).

Half of the respondents (50%) indicated offenders are paying for their own educational services, while only 23% specified that both the government and the offender are paying. An example would be the court ordering an offender to complete his or her GED prior to discharge from supervision. According to the respondents, offenders were most

likely paying for these tests themselves, but in some cases, the government was helping pay part of the bill.

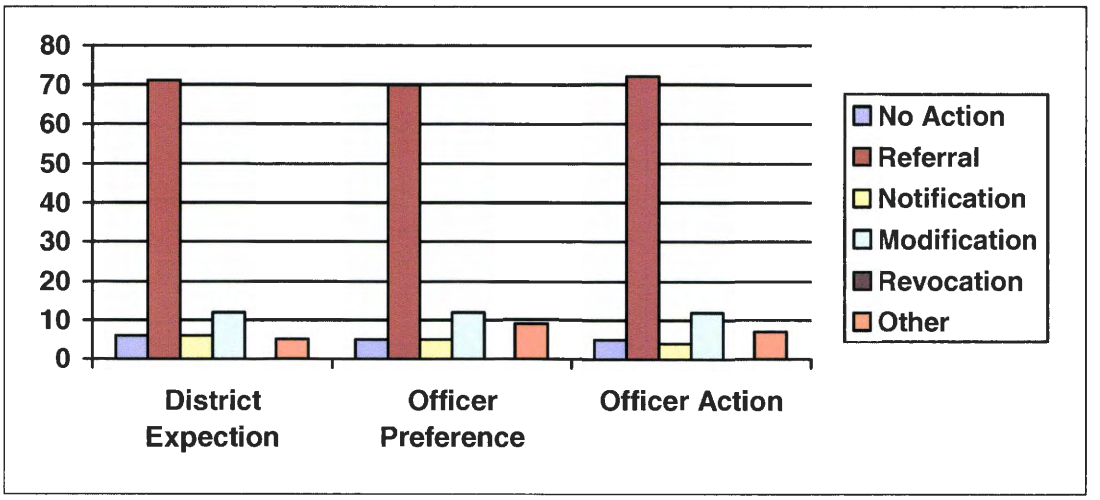
Dependent Variables- Case Study Number One

Exploratory regression analyses were conducted and indicated that none of the independent variables predicted the outcome. Thus, descriptive statistics were used in this study. This method still provided insight to the levels of discretion used by respondents in their decision-making.

In case study number one, the respondents were presented with a case scenario and then two subsequent incidents or violations. Respondents are asked three questions per violation as to what they believe is expected in their district, what they would prefer to do, and what they actually would do with the violation. The first case presented was a typical drug offender who was recently released from custody. The first violation was the offender not having a job and not actively seeking a job.

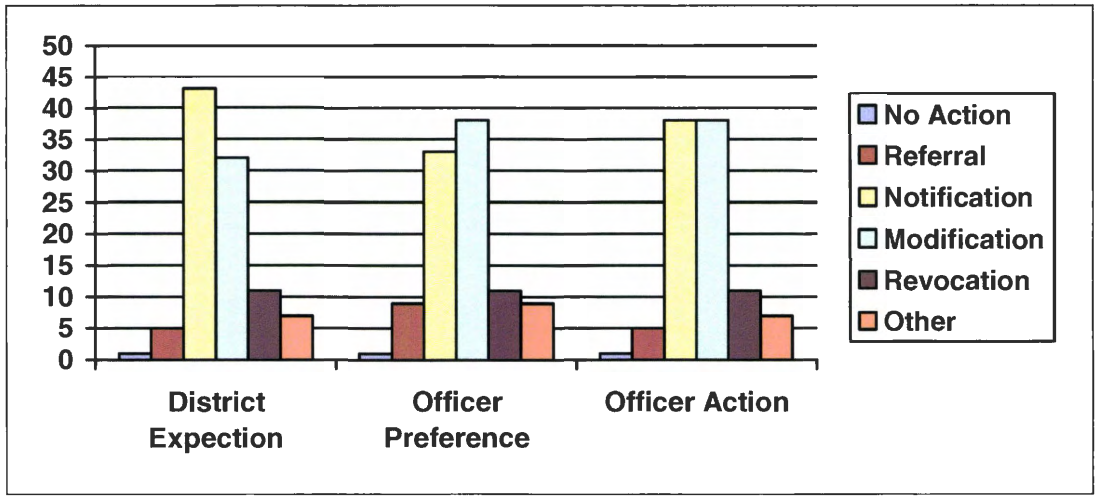
For the first violation, respondents indicated the district in which they work would want them to make a referral to a resource (71%), while the next most popular response was to seek a modification with the court (12%) to change the offender's conditions of release. When asked what they would prefer to do, respondents still chose to make a referral to a resource (70%) with modification still coming in second (12%). When asked what they would do, respondents held true to the pattern and chose to make a referral to a resource (72%) with modification remaining second (12%). (See Figure 1)

Figure 1- Case Study Situation #1a (Percentage)



For the second violation in case study number one, the respondents were told the offender committed a new law violation of providing a false name to law enforcement or stealing less than $100 from a store. In this situation, respondents felt their district would want them to notify the court with no action requested (43%). However, when asked what they would prefer to do, respondents indicated they would seek modification of the offender's conditions of supervision (38%) with simple notification to the court falling to 33%. As to what they actually would do, respondents were equally split between notification (38%) and modification (38%). (See Figure 2)

Figure 2- Case Study Situation #1b (Percentage)

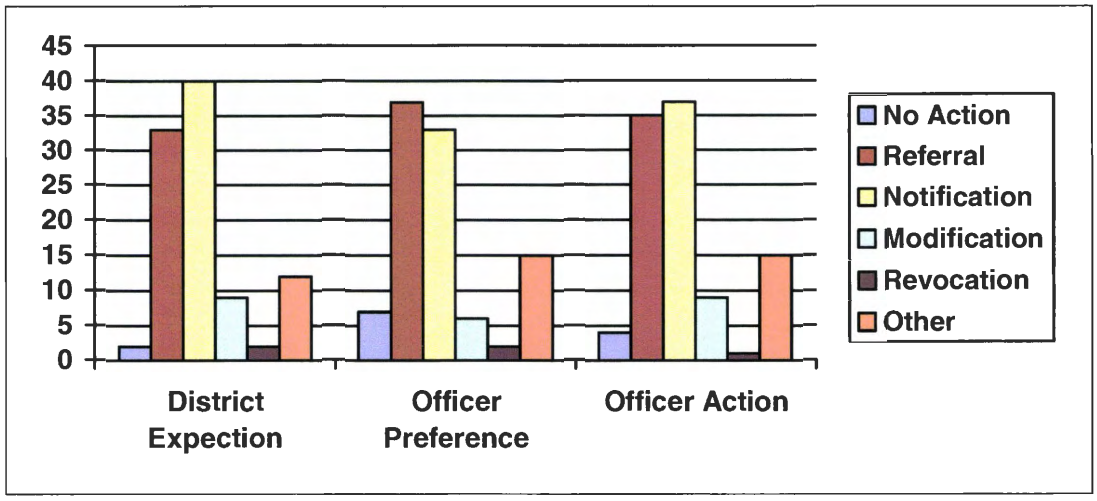


Dependent Variables- Case Study Number Two

Similar to case study number one, in case study two, respondents were presented with a case scenario and then two subsequent incidents or violations. Again, respondents were asked three questions per violation as to what they believe is expected in their district, what they would prefer to do, and what they actually would do with the violation. In this case scenario, the offender is being supervised for two violations of child pornography via Internet and has been on supervision for a year. The first violation respondents had to consider was the offender testing positive for marijuana once.

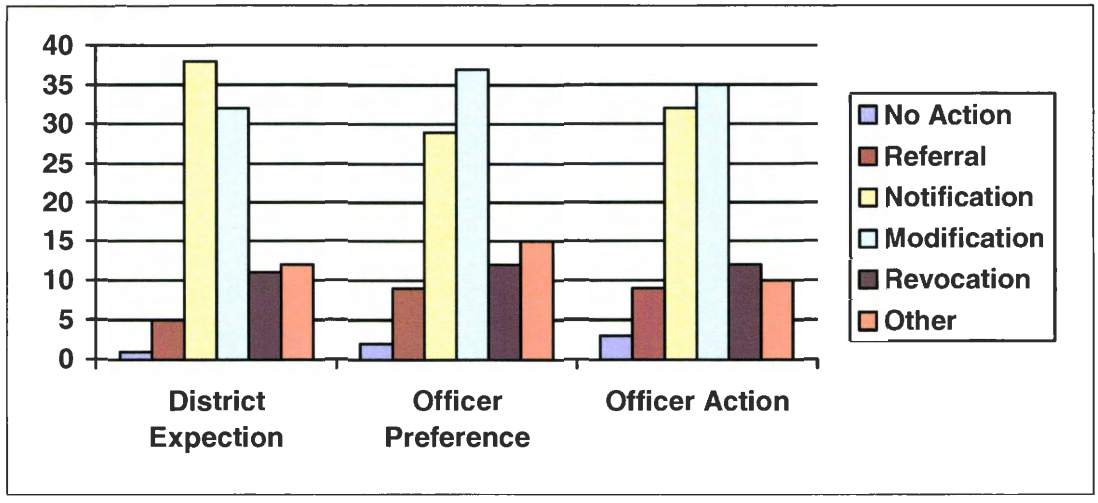
Respondents felt the district expected them to simply notify the court of the violation (41%) with referral to a resource (33%) considered as the second most expected action. When asked their own preference of action, respondents wanted to refer the offender to a resource (37%) and modify (33%). The largest percentage of respondents would modify (37%) or just notify (35%) when questioned what they actually would do. (See Figure 3)

Figure 3- Case Study Situation #2a (Percentage)



For the second violation in case study two, the respondents were told the offender committed a new law violation of providing a false name to law enforcement or stealing less than $100 from a store. In consideration of what they thought the district expected them to do, respondents were most likely to make notification to the court without requesting action (38%) or seek modification with the court (32%). When expressing their own preference, respondents wanted to modify the offender's conditions of supervision (37%) with notification as second (29%) in terms of preference. As for what the respondents would actually do, the largest percentages would modify (35%) or notify (32%). (See Figure 4)

Figure 4- Case Study Situation #2b (Percentage)



Political Orientation

The largest percentage of respondents considered themselves to be liberal in the political views. When presented with the five options ranging from very liberal to very conservative the percentages were as follows: 42% liberal, 32% independent, 20% conservative, 5% very liberal, 0% very conservative, and two respondents did not respond to the question.

Monograph 109

Respondents were questioned about both their belief of their district's view of Monograph 109 and their own view of Monograph 109. Again, Monograph 109, at the time of the study, suggested three core components to supervision offenders: enforcement of the court order, protection of the community, and rehabilitation of the offender. The range of response was labeled as "Very Important" through "Unimportant" for each of the three core components of Monograph 109.

Respondents believed their district felt all three areas of Monograph 109 were at least important. The majority of respondents felt their district viewed all three of the core

components as "very important" (86% for court order, 74% for protection of the community, and 52% for rehabilitation of the offender).

Those numbers changed slightly when respondents were asked about their own view of Monograph 109. Respondents felt enforcing the court order (77%) and protecting the community (86%) were very important, while the majority did not feel rehabilitation of the offender (46%) was "very important." However, the majority of respondents indicated they felt the rehabilitation of offenders was either important or very important (88% when combined).

Constraint on Decisions

A variety of office or district factors constrained the decision-making of respondents. More than half of respondents (51%) agreed that legal precedent guided their decision-making. Twenty-seven percent were neutral, 11% strongly agreed, 7% disagreed, and just 1% strongly disagreed. For legal culture, 43% agreed, 39% were neutral, 5% strongly agreed, 11% disagreed, and 1% strongly disagreed. For expectations of the citizens, 45% were neutral, 28% disagreed, 19% agreed, and 8% strongly disagreed.

Statements

When asked if almost all offenders can be rehabilitated, the majority of respondents indicated they disagreed (53%) with that statement. Twenty percent were neutral, 15% agreed, 11% strongly disagreed, and 1% strongly agreed. However, when respondents were asked if they should do as much as possible to rehabilitate offenders, the majority (54%) agreed with this statement. Further, twenty-seven percent strongly agreed, while 12% were neutral, and 6% disagreed. Similarly, when asked if the respondents gave offenders a second

chance they would regret it, 60% disagreed with that statement. Twenty-three percent were neutral, 9% agreed, 6% strongly disagreed, and 1% strongly agreed.

Respondents were split in their belief that they can always impose the sanctions they want against an offender. Forty-one percent agreed with the statement, while 37% disagreed. Seventeen percent were neutral, with 2% both strongly agreeing and strongly disagreeing with the statement.

According to respondents, their superiors and the court value their opinions. Forty-nine percent agreed that their superior values their opinion, while 40% strongly agreed with this statement. Only eleven percent were either neutral, disagreed or strongly disagreed. The majority of respondents agree (56%) that the court values their opinion, with another 32% strongly agreeing. Only 7% were neutral and 5% disagreed with the statement.

The majority of respondents (57%) agreed that the court would usually go along with their recommendations to the court. Another 27% strongly agreed, while 11% were neutral, 4% disagreed, and 1% strongly disagreed with the statement.

CHAPTER 5. DISCUSSION OF FINDINGS

In reviewing the results, it would appear to hold that many factors contribute to U.S. Probation Officers applying discretion in their decisions. In this discussion of the findings, these factors will be analyzed using the percentages provided in the results section. Additionally, I will provide evidence based on my observations while working as a U.S. Probation Officer.

Demographic Variables

Of interest in the demographic variables, officers have a wealth of experience in the field. The average length of employment was just over seven and one-half years, and direct post-conviction supervision experience was 5.9 years. Thus, the sample included both newer officers and veteran officers. The varied levels of experience added to the survey as it covered the whole range of experience in post-conviction supervision of offenders.

As expected, the officers were well educated with all officers having completed at least a four-year degree, but some with post-graduate and/or Doctorate degrees. Interestingly, the fields of study for officers were very balanced with approximately one-third of officers in each field. This would follow the diverse nature of the job and its applicants/officers. As discussed earlier, probation officers must be able to rotate between law enforcement and social work on a minute-by-minute basis.

I was surprised by the number of males (65%) versus females (35%) conducting post-conviction supervision of offenders. When looking at the distribution of males to females in each office, and the Eighth Circuit as a whole, the gender differences are much more equal. Gender issues may still persist when it comes to the actual supervision of offenders versus writing presentence reports. Based on my own experiences and conversation with officers,

it could also be a matter of preference by some officers not to work in direct supervision of offenders. I have observed that this tends to be more female officers preferring not to supervise offenders than male officers.

Political Orientation

Officers are more liberal than conservative in their political views, but many are independent. As the data showed, 47% of officers describe themselves as liberal while 32% are independent, and 20% are conservative. Of interest to me in this data is that while officers lean to the side of liberal, this data does not support the generalization by some that as a group all officers are conservative and law enforcement only.

Instead, I would suggest the data reflects a relatively healthy balance of many political beliefs by officers. This is beneficial as it is difficult to completely distance one's self from one's political orientation when discussions are held. Thus, when decisions (both individual cases and office policy) are made from group discussion, multiple facets of political views are considered. This healthy balance helps keep discussions from being mono-political in nature.

Resources

Officers reported having access to the needed resources for supervising offenders. Thus, officers were not inhibited in their use of discretion by not having access. If an officer does not have the ability to use an external resource (i.e. halfway house, drug treatment, etc) then that officer is inherently inhibited in discretion. If the only option I have is to revoke someone's supervision if they violate, then my only use of discretion would be to "look the other way" and ignore violations. That is not the case with officers indicating they have a wide variety of options available to them.

Another barrier to decision-making by officers could be the concern of funding for services. The officers indicated the government generally pays for services needed. However, one could imagine how an officer may be reluctant or even unable to refer an offender for treatment if that offender has to pay 100 percent of the costs of treatment. Many offenders are low socio-economical status individuals with little ability to pay for their basic needs, let alone a $300 mental health evaluation. Thus, an officer may use discretion to suspend the mental health condition (if allowed by the court) if the offender would have had to pay for services, and instead, place the offender in drug treatment where perhaps the government pays for services, if the offender has a drug use history.

Dependent Variables

The dependent variables demonstrated that officers use at least mild levels of discretion in their decision-making. This was found at different levels within each case study and situation presented. While situation 1a demonstrated very little to no discretion, the other three situations produced some slight variances between what officers thought the district would want them to do and what they actually would do in that situation.

In Situation 1a, officers followed what they believe to be the desires of their district, as the violation is minimal, and so is the offender comparative to other offenders. In this situation, the offender is presenting little risk to society by being unemployed. Officers identified this and the vast majority responded to refer the offender to a resource such as a job service or employment specialist. This would appear to be a reasonable response to a relatively minor problem. This situation resulted in the demonstration of little or no officer discretion being applied.

In Situation 1b, the stakes have been raised. The officers are told the offender has committed a new law violation. In this situation, the highest percentage of officers indicated they thought the district would want them to notify the court with no action requested. However, in demonstrating discretion, officers indicated they would prefer to modify the offender's conditions with the court. When applying that discretion, the majority of officers were split between no action and modification with the court.

In other words, officers were conflicted between doing what they thought their district would want them to do (notification with no action), and doing what they would prefer to do (modification of the offender's conditions with the court). The pull or tension between these differing courses of action and the actual application of the officer's action is in itself discretion. The officers are forced to make a choice.

In the second case study, we see similar results but in a different fashion. Here officers are dealing with a sexual offender. These types of offenders pose a higher risk to society by their rates of recidivism and the social cost/stake of those crimes. When this study was conducted, the national media and societal attention was not as intense as it is today towards sexual offenders.

In situation 2a, the sexual offender as used marijuana. Officers indicated the district would want notification to the court. However, they would want to make a referral to a resource (i.e. drug treatment provider). In the end, officers are again split on referral versus notification. Also worthy of attention is the "other" response as 15% of the officers responding felt the situation was not adequately addressed with one of the provided responses. Instead, officers wrote in statements indicating they take multiple actions such as

referral and notification to the court. This is an area that the survey instrument failed to consider and would need modified if used again in the future.

Situation 2b is very similar to situation 1b, in that the offender has committed a new law violation. Again, officers were slightly more punitive in their response versus what they believe the district would desire in a response. The highest percentage of officers wanted to and would modify the offender's conditions (i.e. home confinement, halfway house placement, etc.) Today, officers are under increasing pressure by both administrators and society to control the risk to society posed by these offenders. If this survey was to be taken today, the results may be significantly different in that punitive effects might be greater for sexual offenders than any other population of offenders.

Overall in situations 1b and 2b, officers demonstrated that they would use discretion. However, the level of discretion they used is very important. When comparing the percentages, and attempting to test the results using exploratory regression analyses, the use of controlled amounts of discretion by officers was obvious to me. Officers are not radical in their use of discretion.

The case studies provided insight to the limited use of discretion by officers. Based on percentages, officers were likely to consider use of a slightly more or less punitive and/or rehabilitative level of intervention compared to what they felt their district would want them to use. Thus, they did not deviate in great amounts from their district expectations. This therefore suggests controls on officer discretion by the district, including both the administration and the court.

Monograph 109

The results from looking at officer's opinions on Monograph 109 were also encouraging. The majority of officers felt all three of the old Monograph 109's "trinity" of supervision to be at least important. Officers saw the balanced approach of maintaining the safety of the community, enforcing the court order, and rehabilitation of the offender as necessity in supervising offenders. If the focus were to be only in one area, the balance would be severely disrupted and some vital need or needs would not be met. This is an ongoing debate amongst those in the federal system.

Right now, the overall trend in the system is the law enforcement orientation. Some districts are conducting more search and seizures on the residences of offenders. Some argue this is long overdue, while others see it as the erosion of principals of a balanced approach. I personally tend to fall somewhere in the middle. There are some offenders that I feel would fall in to more compliance if they knew they were subject to a sensible search and seizure policy. However, there are other times and cases that require utilization of my social work skills. As I stated earlier, if the only tool you have is a hammer, everything begins to look like a nail. Being a federal probation officer requires having many, many tools in your toolbox, and the unique ability to use them all at different times in different situations.

Constraint on Decisions

Legal precedent and legal culture influence officer's use of discretion. The data points to the legal aspects of the system as influencing the discretion of officers. Thus, answering to the court and the legal system as a whole may change what officers do with offenders.

An example of this would be found in modification of sexual offender's conditions of supervision. *U.S. v Scott* (270 F.3d 632, Eighth Circuit) set the legal precedent that any special conditions placed upon an offender must be directly related to that individual offender's instant offense unless it is foreseeable that the offender may commit a future offense. *Scott* was convicted of armed bank robbery, but had a sex offense in his criminal history. Because of this, the government argued for and was granted by the court special conditions of sex offenders. The Eighth Circuit Court of Appeals overturned the ruling of the court stating the evidence did not support or warrant the additional conditions. In other words, if the offender has a history of child sexual abuse, but is being supervised for a weapon's offense, unless there is compelling new evidence that the offender is still placing children at risk, the court will not modify the conditions of the offender to include sexual offender conditions. Thus, discretion to modify the offender's conditions were restricted by the legal precedent in this case and future cases.

Officers did not feel citizen expectations were a factor in decision-making. Since citizens have little or no knowledge there is a separate federal probation system from the state systems, I could see why officers did not feel the community restraint as much. The only citizens officers generally have contact with are family members or victims of the offender. Although important, these individuals do not carry the same weight as a judge or binding legal precedent. Citizen impact is felt most by officers when public support of a more restrictive law is enough that legislators enact a more restrictive law based on public pressure. This has most recently been felt by public outcry for harsher sentences for sexual offenders.

Officer Views on Rehabilitation of Offenders

Officers are realistic about the chances of rehabilitative success with offenders. While the majority of officers disagreed that all offenders could be rehabilitated, the majority agreed that they should do as much as they can to rehabilitate offenders. It is unrealistic to think that all offenders can or should be rehabilitated (i.e. career criminals, very violent offenders, etc.). Instead, officers appeared to understand that time and money invested in offenders that need and would accept guidance and new direction (meant to mean both therapeutic and punitive) is time and money well spent.

Similarly, when looking at the cynicism factor of officers, as seen in giving offenders a second chance, the majority of officers still felt it was worth the chance. Most often an officer can afford to provide an offender with a second or even third chance. I know the desires of the judges in which I work. They expect that I do everything I can to work with offenders in the community before seeking revocation. Simply put, the system (courts and prison system alike) could not handle all of the violations if there was no tolerance for error by offenders. Additionally, at least one judge has told me personally that he believes offenders have served their time when they come out of prison unless there is a serious infraction. However, I have also heard judges reprimand offenders for ending up back before them on a violation, when the judges knew the probation officer had worked harder than the offender at the term of supervision. Thus, it appears it may have had less to do with lack of cynicism by officers, and more to do with the nature of the system in offenders being allowed additional chances in the community when the desire it.

Relationship with Judges

The relationship an officer has with the court is a delicate one with certain boundaries that are simply not broken. Officers are told from day one that one works at the pleasure of the court as at at-will employee. With that said, in looking further into the relationship between officers and judges, officers were split as to whether they could always impose the sanctions they want upon offenders. I would have to disagree with this statement only because of the "always" found within it. Instead, I suggest I can usually impose the sanctions I want upon offenders. The majority of officers support this conclusion as they responded that the court both values their opinions (88%) and would go along with their recommendations (84%). This is due in part to the working relationship officers have with the judges.

After six years of supervising offenders, I have a feel for what the judge would like me to do in a situation, what my administration would like me to do, how the offender may react to the sanction, and how it would all play out in court if need be. However, this is not to be mistaken for complete confidence that what I request from the court will occur. The judges make the final decision, and if it is not the same as what I would have done, I still assume it was still the right decision and move forward.

Relationship with Supervisors

Officers also need to have a working relationship with their supervisors and administrators. Eighty-nine percent of officers felt that their supervisor values their opinion. While the supervisor may value the opinion of the officer, it may not equate to unbridled discretion on the part of the officer.

One prime example of how discretion occurs within the decision-making process is staffing a case with one's supervisor. Once an officer has an idea of how to address the violation behavior of an offender, the officer will usually staff this idea with a supervisor. Based on my own experiences, I can recall numerous occasions where a staffing with my supervisor either re-enforced or redirected my decision.

For example, if I think an offender should have his conditions modified by the court to be placed at a halfway house due to a new law violation, I would staff this idea with my supervisor. At that staffing, I would explain how I came to that decision (i.e. offender's criminal history, other violations on supervision, employment status, community support, severity of violation, etc). If the supervisor supports the decision, it is presented to the offender. If not, there would usually be a discussion involving one of the previously mentioned factors and why the sanction was not adequate or perhaps overly punitive for the offender.

In these discussions with one's supervisor, past experiences (i.e. being burnt by a prior offender in a similar situation, success in the opposite case, etc.) play into the decision. The supervisor is basing a decision on years of experience in the field and knowledge of how things "usually turn out" in the type of situation at hand. This life experience cannot be denied as a determinate factor in decision-making as a line officer will follow the decisions and directions of a supervisor. Further, these hands-on experiences guide the line officer in how that officer will make future recommendations to the supervisor and/or independent decisions.

Other Considerations- Administration

Although this research questioned officers about how the district as a whole might guide their decision-making, comments about influences of the administration should be included. In addition to the local courts influence, the district administrators, Chief U.S. Probation Officers and their Deputy Chiefs, have the responsibility to report to the Administrative Office (AO) of the U.S. Courts, in Washington, D.C. While each district can decide certain aspects (decentralized budgets, firearms program versus no firearms program, etc.), the AO still provides the bigger picture. Thus, although there is a great deal of local control in decision-making, the main locust of control is found with the AO.

The AO provides budgets for each district based on the percentage of monies allocated to the courts, and specifically, the probation offices across the country. While budgets used to be ever expanding based upon each districts need, the more recent budget years have been less bright. So how does this impact discretion by officers at the local level?

The answer is found in the ability of officers to have access to resources for offenders. As discussed previously, if the specific resource is not available, officers are often forced in to a pattern of searching for alternative resources or methods. For example, when the drug testing and treatment budget runs short, agency paid treatment is reduced or eliminated with the burden being placed upon offenders to either pay for their own services and/or for officers to find alternative free services. This is often very frustrating for officers and treatment staff who are trying to work with offenders to stay clean and sober and out of prison.

Further aggravating the situation is violation behavior. If local resources are not available, officers are left with little discretion as to how to address the violation.

Unfortunately, in these types of situations, treatment takes a back seat to punitive sanctions, as treatment is usually the first item to be cut in budgets. Thus, this is one example of how the decisions by the AO and local administrators can impact the discretion of officers in working with offenders.

Other Considerations- Individual Offenders

The consideration of the individual offender is also of great importance. Officers often struggle with what to do with offenders that violate sporadically. These offenders are not consistent violators, but rather violate once every six to twelve months, for example. Perhaps the offender has a wife and young child. He just violated by using marijuana with a friend on a one-time occasion. Is it really in the best interest of the offender, his wife, and young child for him to go sit in prison for a year because it is the second or third time this has occurred in three years?

Although some may disagree, the answer in reality is often no. If the offender has a good job, provides minimal risk of harm to society, and has stable family relationships, it is most likely better to work with the individual within the community. Placing them in treatment with punitive sanctions such as home confinement with electronic monitoring or in a halfway house program is more productive. As the saying goes, prison makes for better criminals. However, this is not to say that officers won't recommend to the court to send offenders back to prison.

Sometimes the decision to recommend the return of an individual to prison is based on the same hands-on experience by an officer. Repeat offenders that consistently show no respect for their conditions of supervision are the highest risk of being returned to prison. An officer can only do so much in the community for treatment and/or punitive sanctions, until

the offender and the community may be better off with the offender in prison. I have had offenders tell me that they can only make it outside of the prison walls for a few months at a time before they feel they need to "return home" to prison. Institutionalization of offenders is a difficult challenge for the system with no real good answers.

The opposite is also true. An offender with little or no criminal history that committed a non-violent crime also deserves an individualized approach to that offender's supervision. Once offenders have served their time and/or have come to understand that what they did was wrong or harmful, and are in compliance with their conditions of supervision, to continue to address their supervision in the same manner as those that continue to violate is inappropriate. This is not to say that certain offenders should get special treatment, but rather the use of limited resources and officer time can be better spent elsewhere. Thus, officers will use the discretion provided them to rank the offenders levels of need and allocate resources accordingly. The individual described above will have basic conditions and requirements, but will not be seen by me nearly as often as individuals that posses a higher risks to themselves and the community. Most would agree that this is wise use of discretion and taxpayer money.

Limitations of this Research

One limitation of this study would include the scope of the study. This study examined only districts in the Eighth Circuit. While I believe the findings of this study can be generalized within the national population, regional differences are likely to exist, which could change this statement. Only a test of the same instrument in those areas could conclusively confirm or deny this statement.

A higher response rate within the Eight Circuit could change the results of the study as well. Only nine of the ten districts surveyed returned surveys, and even then some districts that participated had a limited response. Improved distribution techniques, such as had delivery and pick up of surveys, may have increased the response rate.

Another limitation of the study was the clarity of the instrument itself. While pre-tested and checked for validity, the survey had never been utilized prior to this study. Specifically, the case study question responses needed to have included an option for officers to both notify the court and use a resource. Officers indicated this missing option caused them confusion, and pointed out they must report certain types of violations even if they just refer the offender to a resource.

Additionally, more case studies with varied type of cases and situations would provide for more in depth analysis of discretion applied by the officers. By presenting officers with a greater range of possible violations in the same or different scenarios, the researcher would be better able to see how officers responded to various types of offenders. If I presented officers with repeated violations by the same offender, I would be able to check their breaking point at which they decide to take the offender back to court.

Personal interviews with officers after they completed the survey would have provided additional insight as well. Although I have drawn from my own experiences and observations of those officers around me, there maybe situations I have not experienced or considered. For example, by interviewing officers, the researcher would be able to ask follow-up questions about how an officer reaches the decision to take the offender back to court for revocation. What are the subjective factors that specifically determine these decisions?

Overall, the future use of a modified version of the survey instrument, with additional questions, and a broad national base of officers to survey and interview would improve upon and perhaps modify the findings of this research. The next section will provide some additional insight where I think future research in this area may be headed.

CHAPTER 6. SIGNIFICANCE AND CONCLUSIONS

This first attempt to research the topic of officer discretion provided some insight in to the decision-making processes of federal probation officers, including the sub-systems that influenced their decisions. Officers try to walk the delicate line of enforcing the court order, protecting the community from further harm, and assist the offender in becoming a law-abiding citizen. Although often conflicting goals, officers use guidance from the courts, supervisors, and each other in making these tough decisions. The ultimate goal is successful offender reentry into society.

One of the leading experts on offender reentry, Joan Petersilia, suggests that offender reentry begins during confinement, continues with the manner in which they are released, and concludes with how they are supervised in the community (2003). My research relates best to the work being done at the supervision level of offender reentry and recidivism, and the best practices therein. As offenders leave prison and reenter society, the system and the sub-components of the system (officers, judges, counselors, etc.) are charged with both assisting and holding the offender accountable. As previously discussed, this produces the tension between what would seem like two different goals, rehabilitation and monitoring.

While they may be at different ends of the spectrum, they are best practiced in combination. For example, when a drug offender relapses, not only should treatment be considered, some level of punitive measures are also usually needed. Often times, I will place a drug offender in outpatient treatment, and based upon the individual's history, I may also place the offender on home confinement/electronic monitoring. The sanction is both intermediate because it is not returning the offender to prison, and progressive as it is not allowing the offender to use controlled substances without penalty.

The use of intermediate and progressive sanctions is one key element in the successful reentry of offenders (Harris, Petersen & Rapoza, 2001). But how does this work? What are the type of programs and decisions that lend to progressive sanctions? There are endless suggestions on how this might be accomplished.

Some suggested the use of a complete structured reentry system (Byrne, Taxman & Young, 2002; Parent & Barnett, 2004), while others had concern about the system becoming overly technical with less focus on the individual within these systems (Schneider, Ervin, & Snyder-Joy, 1996). While the federal system does not have a catchy themed program of reentry for offenders, it does offer structured release practices and it continues to develop best practices with measured outcomes (Cadigan, 2004). My descriptive research suggested that officers make situation-by-situation decisions within these practices that utilize sound discretionary decision-making.

As mentioned, when offenders violate, officers are expected to have some level of reaction. Further, it would appear from this research that federal probation officers reactions are not overly radical in their response. Officers utilized the local resources they have available to them, whether it is substance abuse treatment or halfway houses, in order to address the violation behavior. Officers were less likely to immediately resort to a recommendation of revocation for relatively minor violations offered in the case studies. Again, I would assert that my research this shows active use of progressive and intermediate sanctions by federal probation officers.

How are federal probation officers able to apply sound discretionary practices? The education of officers, along with uniform guidelines of how to deal with violations, have previously been found to be significant in the effective application of discretion (Stalans et.

al., 2004). As one can tell from the sample used in this study, federal probation officers are generally well-educated individuals with years of experience in the field. Additionally, officers have a wealth of experience from which to draw from in their supervisors and administration. As established in this research, they are part of the sub-cultures that guide and control the use of discretionary practices by officers.

Suggestions for Future Study

Future study of the use of discretion by federal probation officers might be best researched in the areas of the sub-systems. Based both on my research and personal experiences as a federal probation officer, I propose a list of questions that must be considered in future research of this topic.

1) How do the guidelines, both written and unwritten, of a supervisor and/or the administration contribute to or restrict the officer's use of discretion?
2) What impact does the court have on the decisions of officers? Liberal judges versus conservative judges? Case law versus the statues?
3) What is the status of Monograph 109? What are the expectations and recommendations coming from the Administrative Officer in Washington D.C.?
4) How do changes in budget, both increases and decreases, affect the availability of community resources to officers and offenders?

These are only a few suggestions for further research. The use of discretion amongst federal probation officers has had little attention in research. However, such future research results could impact the system for the positive as officers and administrators alike might better understand how the use of discretion by officers impacts the system as a whole.

Summary

Federal probation officers use at least some levels of discretion in their daily interactions and decisions regarding offenders. This statement has been thought to be true, but was never tested until now. Although exhaustive prior research had been done in the areas of police, prosecutorial, and judicial discretion, little or no research existed in the specific area of post-conviction discretion by federal probation officers.

This research was a first attempt at looking in to the factors that contribute to the use of discretion and the sub-systems that often control such discretion. The good news is that federal probation officers are not radical, punitive individuals, nor are they radically liberal with a sole focus on rehabilitation. Instead, this descriptive research suggests that federal probation officers are professionals trying to balance the demands of community protection and offender rehabilitation, while enforcing the court's order of justice.

As the now retired Associate General Counsel for the Administration Office of the U.S. Courts, David Adair Jr., stated regarding federal probation officers,

> It is their responsibility to try to effect change in offenders' lives. The effective performance of this responsibility requires the flexibility to exercise their judgment. Indeed, it has been argued that officers need a degree of discretion in offenders' incentives to comply with the conditions of release. It is important that offenders perceive that there are sure and rapid consequences to breaking the rules and rewards for following the rules. Officer flexibility promotes this perception (2004).

Federal probation officers are well educated from a variety of academic and social backgrounds with various perspectives on law enforcement and social work. The men and women of federal probation have many years of experience on the job, and have earned the respect of the supervisors and judges with whom they work. They handle each individual as an individual without the cookie cutter approach to supervision. Perhaps one of the most

important aspects of this individualized approach is to allow officers to exercise some level of discretion.

APPENDIX. SURVEY INSTRUMENT

UNITED STATES PROBATION OFFICERS: THE USE OF RESOURCES AND DISCRETION IN DECISION-MAKING

Note: <u>This questionnaire should only be completed by officers providing direct supervision of post-conviction offenders within the community</u>. The results of this survey will be used for statistical comparisons only, and officer identities will remain strictly anonymous. Thank you for your time.

1. What is the name of your district? _____

2. Which office location do you work at within your district? _____

3. What is your title/position/rank within your office (i.e. USPO, Sr. USPO, etc)? _____

4. Approximately how many months have you been at least the rank of USPO? _____

    4a. Of this time, how many years or months have you supervised offenders within the community? _____

5. What is your highest level of education completed? (Circle highest level completed below)

    a. Bachelors (BA or BS)

    b. Masters (MA, MS, etc)

    c. PhD

6. What field(s) of study is/are your degree(s)? (Circle all that apply)

    a. Criminal Justice/Corrections

    b. Law Degree

    c. Psychology

    d. Public Administration

    e. Sociology/Social Work

    f. Other (please specify) _____

7. Please indicate your gender:

    a. Female

    b. Male

8. What duties do you perform within your office? (Please circle all that apply below)

	NO	YES
a. Pre-Trial	0	1
b. Pre-Sentence	0	1
c. Electronic Monitoring	0	1
d. Mental Health Specialist	0	1
e. Drug/Alcohol Specialist	0	1

f. Other (please write in) _____

9. What percentage of your time do you estimate that you spend on post-conviction supervision cases?_____%

10. How many officers within your office supervise offenders within the community (post-conviction supervision only)? _____

For purposes of this survey:

Resources are internal or external services available to an officer for use with an offender (i.e. education classes, drug treatment, etc).

Modification is the process of adjusting an offender's supervision conditions by order of the Court of jurisdiction in the case (i.e. Form 12A, 12B, etc.).

Revocation is the process of bringing an offender before the Court of jurisdiction for the purpose of terminating the offender's supervised release and returning the offender to prison (i.e. Form 12C).

11. Which of the following resources are available in your district? (Please circle all that apply)

	NO	YES
a. Drug treatment/counseling	0	1
b. Mental health treatment/counseling	0	1
c. Electronic monitoring	0	1
d. Halfway house/CCC	0	1
e. Educational classes in community	0	1
f. Educational classes led by officers	0	1

g. Other(s) (please specify) _____

12. Of the listed resources available in your district, which resources are only funded by government funds, only paid by the offender, or could be funded by either the government or the offender? (Please circle only one per line)

	Gov't	Offender	Both
a. Drug treatment/counseling	1	2	3
b. Mental health treatment/counseling	1	2	3
c. Electronic monitoring	1	2	3
d. Halfway house/CCC	1	2	3
e. Educational classes in community	1	2	3
f. Educational classes led by officers	1	2	3
g. Other (Specify) _____	1	2	3
h. Other (Specify) _____	1	2	3

The following are fictitious case examples. With the understanding that not all the detailed case information is provided, please read the example and provide us with the best approximation of your judgment in each situation.

Case study #1: John is a 28 year-old male with a long history of assault and weapons charges. He is serving a three-year term of supervised release (TSR) following a period of incarceration for 110 months for Conspiracy to Distribute Methamphetamine. Besides his standard conditions, he has a drug/alcohol testing and treatment condition, a mental health evaluation condition, and an employment condition. He has been on his TSR for three months.

Situation #1a: John is still unemployed, and by all accounts is not actively job searching.

13. What type of intervention do you believe is **expected in your district**? (Circle only one answer)

a. No action, just verbal warning and/or encouragement

b. Referral to resource

c. Notification to Court with no action requested

d. Modification of TSR (with or without hearing)

e. Petition for revocation hearing

f. Other

14. What type of intervention **would you <u>prefer</u> to make** in this same situation? (Circle only one answer)

    a. No action, just verbal warning and/or encouragement

    b. Referral to resource

    c. Notification to Court with no action requested

    d. Modification of TSR (with or without hearing)

    e. Petition for revocation hearing

    f. Other

15. What type of intervention **<u>would</u> you do** in this same situation? (Circle only one answer)

    a. No action, just verbal warning and/or encouragement

    b. Referral to resource

    c. Notification to Court with no action requested

    d. Modification of TSR (with or without hearing)

    e. Petition for revocation hearing

    f. Other

    <u>Situation #1b:</u> John is employed, but has committed a new law violation (i.e. provided a law enforcement officer with a false name during a traffic stop, or stole less than $100 worth of merchandise from a department store, etc.).

16. What type of intervention do you believe is **expected in your district**? (Circle only one answer)

    a. No action, just verbal warning and/or encouragement

    b. Referral to resource

    c. Notification to Court with no action requested

    d. Modification of TSR (with or without hearing)

    e. Petition for revocation hearing

    f. Other

17. What type of intervention **would you <u>prefer</u> to make** in this same situation? (Circle only one answer)

    a. No action, just verbal warning and/or encouragement

    b. Referral to resource

    c. Notification to Court with no action requested

    d. Modification of TSR (with or without hearing)

    e. Petition for revocation hearing

    f. Other

18. What type of intervention **<u>would</u> you do** in this same situation? (Circle only one answer)

    a. No action, just verbal warning and/or encouragement

    b. Referral to resource

    c. Notification to Court with no action requested

    d. Modification of TSR (with or without hearing)

    e. Petition for revocation hearing

    f. Other

    <u>Case Study #2:</u> Larry is a 28-year-old male with no prior criminal history and a small drug history. He is serving a three-year term of supervised release (TSR) following a period of incarceration for 34 months for two counts of Distribution of Child Pornography by Means of Interstate Commerce (Internet). Besides his standard conditions, he has twelve separate "sex offender conditions," and a drug/alcohol testing/treatment condition. He has been on his TSR for twelve months.

    <u>Situation #2a:</u> Larry provided one urine sample that has tested positive for THC (marijuana).

19. What type of intervention do you believe is **expected in your district**? (Circle only one answer)

    a. No action, just verbal warning and/or encouragement

    b. Referral to resource

    c. Notification to Court with no action requested

    d. Modification of TSR (with or without hearing)

    e. Petition for revocation hearing

    f. Other

20. What type of intervention **would you <u>prefer</u> to make** in this same situation? (Circle only one answer)

    a. No action, just verbal warning and/or encouragement

    b. Referral to resource

    c. Notification to Court with no action requested

    d. Modification of TSR (with or without hearing)

    e. Petition for revocation hearing

    f. Other

21. What type of intervention **<u>would</u> you do** in this same situation? (Circle only one answer)

    a. No action, just verbal warning and/or encouragement

    b. Referral to resource

    c. Notification to Court with no action requested

    d. Modification of TSR (with or without hearing)

    e. Petition for revocation hearing

    f. Other

    <u>Situation #2b:</u> Larry has committed a new law violation (i.e. provided a law enforcement officer with a false name during a traffic stop, or stole less than $100 worth of merchandise from a department store, etc.).

22. What type of intervention do you believe is **expected in your district**? (Circle only one answer)

    a. No action, just verbal warning and/or encouragement

    b. Referral to resource

    c. Notification to Court with no action requested

    d. Modification of TSR (with or without hearing)

    e. Petition for revocation hearing

    f. Other

23. What type of intervention **would you <u>prefer</u> to make** in this same situation? (Circle only one answer)

    a. No action, just verbal warning and/or encouragement

    b. Referral to resource

    c. Notification to Court with no action requested

    d. Modification of TSR (with or without hearing)

    e. Petition for revocation hearing

    f. Other

24. What type of intervention **<u>would</u> you do** in this same situation? (Circle only one answer)

    a. No action, just verbal warning and/or encouragement

    b. Referral to resource

    c. Notification to Court with no action requested

    d. Modification of TSR (with or without hearing)

    e. Petition for revocation hearing

    f. Other

25. If you were to describe your overall political orientation, what would it be? (Circle only one answer)

    Very Liberal ---- Liberal ---- Independent ---- Conservative ---- Very Conservative

Please evaluate the following statements using the following criteria: **Very Important (VI), Important (I), Neutral (N), Less Important (LI), or Unimportant (UI).**

(Circle only one per statement/line)

According to Monograph 109, officers should consider three main goals of supervised release: enforcement of the Court's order; protection of the community; and rehabilitation of the offender.

26. Your district's view of Monograph 109:

a. Enforcement of the Court order	VI	I	N	LI	UI
b. Protection of the community	VI	I	N	LI	UI
c. Rehabilitation of the offender	VI	I	N	LI	UI

27. Your view of Monograph 109:

a. Enforcement of the Court order	VI	I	N	LI	UI
b. Protection of the community	VI	I	N	LI	UI
c. Rehabilitation of the offender	VI	I	N	LI	UI

Please evaluate the following statements using the following criteria: **Strongly Agree (SA), Agree (A), Neutral (N), Disagree (D), or Strongly Disagree (SD).**

(Circle only one per statement/line)

28. Within my office, the decisions regarding sanctions against offenders are constrained by:

a. legal precedent	SA	A	N	D	SD
b. legal culture	SA	A	N	D	SD
c. expectations of the citizens	SA	A	N	D	SD
29. Almost everyone can be rehabilitated.	SA	A	N	D	SD
30. Within the law, I can always impose the sanctions I want upon an offender.	SA	A	N	D	SD
31. My opinions are valued by my supervisor.	SA	A	N	D	SD
32. My opinions are valued by the Court.	SA	A	N	D	SD
33. The Court usually goes along with my recommendations to the Court.	SA	A	N	D	SD
34. From my experience, if an officer allows an offender a second chance, there is a good chance the officer will regret it.	SA	A	N	D	SD
35. Officers should do as much as possible to rehabilitate an offender.	SA	A	N	D	SD

Additional Comments:_____

_____

_____

_____

_____

_____

Thank you for taking your valuable time to answer this survey. Please return the survey in the enclosed self-addressed, stamped envelope.

Revised 06/30/02

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